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RECORDS EXTRACT OF APPELLANT

IN THE
APPELLATE COURT
OF MARYLAND

September Term 2022,
No. 1145 & No. 1457

JUSTIN HOLDER

Appellant

V.

JEFFREY YOUNG

Appellee

Appeal from the Circuit Court of Washington County
The Honorable Andrew F. Wilkinson

RECORD EXTRACT

Volume 3

JUSTIN HOLDER
APPELLANT

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JEFFREY YOUNG *

Plaintiff *

v. * **CASE NO. C-21-CV-20-371**

JUSTIN HOLDER, et al. *

Defendants *

TRANSCRIPT OF PROCEEDINGS
(MERITS HEARING)

(VOLUME III – DAY THREE – MORNING SESSION)

Circuit Court
Hagerstown, MD
June 23, 2022

Before:

The Honorable Andrew F. Wilkinson

Appearances:

R. David Pembroke, Esquire, attorney for Plaintiff, Jeffrey Young; and

Justin Holder, Defendant, pro se; and

Brandy Peeples, Esquire, attorney for Defendant, Deena Holder; and

Robert Kline, Esquire, attorney for Defendant, Uncle Eddies Brokedown Palace

Transcribed from electronic recording by:

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P R O C E E D I N G S

(Whereupon this matter commenced at 9:01 a. m.)

THE COURT: Okay, we are back on the record for the matter of Jeffrey Young versus Justin Holder, et al., C-21-CV-20-371. Before we get going on witnesses today, let's talk any preliminary matters. Mr. Pembroke, do you have any preliminary matters we need to discuss this morning?

MR. PEMBROKE: I recall yesterday the Court indicating it wanted to inquire into some of the specifics of Uncle Eddies.

THE COURT: We're going to talk about that.

MR. PEMBROKE: I don't when the Court wished to do that.

THE COURT: We're going to talk about that. That's on my list of first thing to talk about preliminarily.

MR. PEMBROKE: I have nothing further.

THE COURT: Okay. Ms. Peeples, anything preliminarily?

MS. PEEPLES: Just preliminarily, I had a discussion with my client yesterday, and everyone I believe anticipated this to be a three-day trial.

THE COURT: Right.

MS. PEEPLES: She's got plans beginning tomorrow that are, I believe, is out of the state or something like

that. So I don't know…

THE COURT: Mrs. Holder.

MS. PEEPLES: Yes.

THE COURT: Yeah.

MS. PEEPLES: I don't know what Your Honor's plans are should we by some chance extend beyond today.

THE COURT: Well I have no plan to extend beyond today. So…

MS. PEEPLES: Okay.

THE COURT: …if we get to the end of today, and I decide that I feel there's a need to extend, then we can have that discussion. But I think preliminarily, the answer is we're finishing today.

MS. PEEPLES: I would hope so too, Your Honor. Thank you.

THE COURT: Out of curiosity, is she coming today?

MS. PEEPLES: She is. She…

THE COURT: And if she's not, it's okay.

MS. PEEPLES: She is coming today. She had to drop her daughter off.

THE COURT: Understood. Okay, Mr. Kline, any specific preliminary matters?

MR. KLINE: No, Judge. Thank you. Good morning.

THE COURT: Mr. Holder, any specific preliminary matters?

MR. HOLDER: I - - I did speak with Mr. Kuczynski, and I - - Mr. Hull's coming at 11:00 a. m.

THE COURT: That's right.

MR. HOLDER: Okay.

THE COURT: My office spoke with Mr. Kuczynski as well. That's number two on my preliminary. So let's start there.

MR. HOLDER: Okay.

THE COURT: We - - we had messages back and forth with Mr. Kuczynski's office last night and this morning. We were advised that the designee will be Mr. Hull, Matt Hull?

MR. HOLDER: Mm-hm.

THE COURT: Is it H-U-L-L or H-A-L-L?

MR. HOLDER: It's H-U-L-L, sir.

THE COURT: Hull.

MR. HOLDER: Hull, correct.

THE COURT: Okay. He will be the designee. Mr. Hull had a government matter this morning. And so I was told he could be here at 11:00. I looked at our batting order for today, and I thought 11:00 made sense rather than forcing him to miss a government obligation. And so he'll be here today at 11:00.

MR. HOLDER: Okay.

THE COURT: You knew that.

MR. HOLDER: I - - I…
THE COURT: Nobody…
MR. HOLDER: As soon as we got done…
THE COURT: You and I knew that but…
MR. HOLDER: Yeah.
THE COURT: …okay. So 11 o'clock. Okay?
MR. HOLDER: Yes, sir. Yes, Your Honor.
THE COURT: All right so for your planning from the defense, he'll be here at 11:00. And I think that makes sense because it sounds like we have Mr. Estes, then Attorney Clabaugh, then Mr. Hull. Right?
MR. HOLDER: Yes, Your Honor.
THE COURT: Okay.
MS. PEEPLES: May I grab a cup please?
THE COURT: What do you need?
MS. PEEPLES: A cup of water, please.
THE COURT: Of course. Yeah, no, no, take - - we got time.
MS. PEEPLES: Thank you. I appreciate that. Thank you.
THE COURT: Okay, so that takes care of my preliminary number one. My preliminary number two, and I - - I don't want to hold up time right now to deal with it. Let me talk to Mr. Kline. Mr. Kline…
MR. KLINE: At the bench?

THE COURT: No, right - - just stay right there. Mr. Holder was standing up, but I - - I want to talk to you. You all right. You're fine right there. By 1 o'clock today, I don't want to take time to do it now because we have Mr. Estes, I want to get into - - into testimony. But 1 o'clock today, I'm hoping that you can proffer to me what the ownership is of Uncle Eddies and what that ownership train, trail leads to. And the - - I ask if for a couple of reasons. Yesterday when we spoke about it, I understood that there was an LLC that is the member of Uncle Eddies. That LLC I think is called Koolbus, LLC. I then think I heard Mr. Holder say something to the effect of it being a land trust. If it's a trust, then there should be a trustee. And so what I'm confused about is are the daughters the beneficiaries of a trust for which there is a trustee and that trust is the sole member of Koolbus, LLC, and Koolbus, LLC, is the sole member of Uncle Eddies? Or is it something different?

MR. KLINE: Understood.

THE COURT: So that's what I'm asking. And - - and I know it may be complex and it may take a few minutes to explain to me. But I think I want to understand the party that you represent. So by 1 o'clock today, after lunch, if you can make that proffer to me after you take a look at it.

MR. KLINE: Yes, sir.

THE COURT: I don't want to hide the ball to you though. Okay? The other reason I'm asking is Uncle Eddies filed an answer to the Second Amended Complaint in this case. Or, I'm sorry, in the Ben Estes versus Justin Holder case. The answer is filed July 26 of last year. And in that answer, Justin Holder under oath signed as the member of Uncle Eddies. So I'm confused. I hope that you can clear up that - - clear that up for me.

MR. KLINE: Yes, sir.

THE COURT: After the lunch break. Okay?

MR. KLINE: Understood.

THE COURT: Ms. Peeples?

MS. PEEPLES: Your Honor, I was just going to ask the Court if that's going to be cleared up after the lunch break, I would simply request that it be placed on the record because it could give us the ease, you know, for ease of the other proceeding, Mr. Estes versus Mr. Holder and Uncle Eddies, I - - I would like that testimony to - - to be able to…

THE COURT: I'm going to give Mr. Kline an opportunity as an officer of the court to simply proffer it to me on the record.

MS. PEEPLES: Okay.

THE COURT: I'm not saying in chambers. I'm saying on

the record here.

MR. KLINE: Understood.

THE COURT: But I want to give him an opportunity to be sure that he fully understands it before - - as the attorney for Uncle Eddies, and I think a proffer may be sufficient.

MS. PEEPLES: Okay.

THE COURT: Rather than taking testimony on it.

MS. PEEPLES: That's fine, Your Honor. I just thought it would help the other matter.

THE COURT: I think his proffer - - if I feel that the proffer doesn't help me, then I'll have testimony from Mr. Holder on the issue.

MS. PEEPLES: Okay.

THE COURT: But I'm hoping that Mr. Kline can get to the bottom of it and just tell me the answer.

MS. PEEPLES: Thank you, Your Honor.

THE COURT: Okay? Okay, so we are ready for testimony then?

MR. PEMBROKE: Yes, sir.

THE COURT: Okay, we are in the defense case. I believe the batting order was that Mr. Estes would be next, but you tell me. Who's the next witness?

MR. HOLDER: Your Honor, I call Mr. Benjamin Estes.

THE COURT: Okay. And before you start, Mr. Holder,

let me make a few comments with Mr. Estes on the stand after he's under oath. Okay?

TESTIMONY OF BENJAMIN N. ESTES

BENJAMIN N. ESTES, a witness, produced on call of the Defendant Justin Holder, first having been duly sworn according to law, was examined and testified as follows:

A: Did you want to talk to me, Judge?

THE COURT: Have a seat.

A: The chair doesn't move.

THE COURT: It doesn't move. It just swivels.

A: I know.

THE COURT: Could you give me your name?

A: Sure. It's Benjamin N. Estes.

THE COURT: Estes.

A: Estes, that's correct.

THE COURT: Okay.

A: Yeah.

THE COURT: All right, Mr. Estes, what I wanted to - - to talk to you about before the testimony starts is a few ground rules. Okay?

A: Yeah.

THE COURT: Ground rule number one, be sure you allow the attorneys to finish their question before you start answering.

A: Yes, sir.

THE COURT: Ground rule number two, and this is not a rule with a capital R, it's a rule with a lowercase R, okay? I have multiple witnesses I need to get through today. I ask that your answers be succinct and to the point. Okay?

A: Yes, Your Honor.

THE COURT: If you need to extend, you're certainly permitted to extend your answer. But I may have to jump in and move us along. Okay?

A: Very well.

THE COURT: Okay. Ground rule number 3, again, with a lowercase R, you may recall that I think it was earlier this year, there was a motions hearing in other cases.

A: Yes.

THE COURT: Where you were at one table.

A: Yes.

THE COURT: Mr. Holder was at another table.

A: Yes.

THE COURT: And I was sitting right here.

A: Yes, sir.

THE COURT: And at the beginning of that hearing, I -- someone said, and it was either you or Mr. Holder, I forget, that there was concern that the hearing could get contentious. Do you remember that?

A: Yeah. That - - that was my comment.

THE COURT: And do you remember that I said, "No, it's not?"

A: Understood.

THE COURT: Just like that. Do you remember me saying that?

A: Mm-hm.

THE COURT: And the hearing didn't get contentious did it?

A: No.

THE COURT: Right. It went just fine. Right?

A: Right.

THE COURT: That's what I expect today. Okay?

A: Yes, sir.

MR. HOLDER: Yes, Your Honor.

THE COURT: Understood?

MR. HOLDER: Yes. Yes, sir, Your Honor.

THE COURT: Okay. Are you ready to begin questioning?

MR. HOLDER: I am, Your Honor.

THE COURT: Okay, Mr. Holder, go ahead. He's already identified himself. What's your address, sir?

A: 22 Mount Hebron Road, Keedysville, Maryland, 21756.

THE COURT: Okay, go ahead with your first question, sir.

DIRECT EXAMINATION

By Mr. Holder:

Q: Good morning, Mr. Estes. Thank you. This is Plaintiff's Exhibit Number Ten. He's identified as a tax map of the general vicinity of his property in Keedysville. Are you aware from looking at this map where your property may be in Keedysville? And you - - you can come down…

THE COURT: If - - if you want to step down, Mr. Estes, and point to it, that be fine.

(Whereupon the witness does as instructed.)

A: I'm just trying to get my bearings, Your Honor.

THE COURT: Sure.

A: This is part of my property here.

THE COURT: Identifying Parcel 271.

A: Yes. And it goes on both sides of the creek as you can see. Uh, and then this map isn't entirely accurate as far as I know because I believe this should say, "Parcel 293." But don't quote me on that, Your Honor.

THE COURT: That's okay. The…

A: I also own that as well. And I…

THE COURT: The record - - I understand, hang on. The record will reflect that he's pointing to the right side of the exhibit at where it says, "Parcel .2." It's probably simply cut off because of the size of the copy.

A: And I also own land over in this area as well. And that's not on…

THE COURT: Would that generally be to the east of Parcel 271?

A: Yeah, it's act- yeah, that's…

THE COURT: Okay.

A: …that is correct.

THE COURT: Okay.

A: I don't know when this map was - - was made.

THE COURT: Okay. Mr. Holder, do you need him to point to anything else on the map?

Q: No. I'll…

THE COURT: Okay.

Q: That was…

THE COURT: Have a seat, sir.

(The witness does as instructed.)

Q: I just wanted to get, you know, where you were in relation to everybody. And are you somewhat familiar with Parcel 127 of - - of Uncle Eddies?

A: Some - - somewhat, yeah. I can see that it's on the west side of the creek on that map.

Q: Are you familiar with any way they can access the property from your side?

THE COURT: Like on what - - what property?

Q: The property here at 127 that Uncle Eddies could

access or Deena Holder could access their property from…

THE COURT: Through - - I want to be sure that I understand the question. Is your question can Par- does he know a way that Parcel 127 can access 127 through Mr. Estes' land?

Q: Through - - yeah, through this Parcel 271 here.

THE COURT: Okay.

A: I'm just a little confused, and I'm glad you had this conversation at the beginning. I don't know who Uncle Eddies is. I mean I'm confused as to it as well. So when say, "Uncle Eddies," who are we talking about?

THE COURT: Well hang on a second. The question is looking at that map…

A: Right.

THE COURT: Parcel 127…

A: Okay.

THE COURT: …you understand that that is a parcel to the generally west of your Parcel 271?

A: Correct.

THE COURT: Do you know a way that Parcel 127 has access through your land?

A: Through my land?

THE COURT: Yes.

A: Not that I know of.

THE COURT: Okay. That's the answer, he does not

know.

Q: Okay. Do - - do you know of any way they have - - do you know Bryan Smith and Brandon Smith?

A: I - - they used to be neighbors of mine. But I don't - - I don't know them.

Q: Okay.

A: I mean I know who they are. But I really have had very little contact with them over the years. I'm aware of who they are. And Mr. Smith did a - - performed an assessment on my house when I bought it.

Q: Are you aware of if they own property in Keedysville known as Parcel 302? Are you aware? Have you ever been there?

A: You know, I don't know exactly what Mr. Smith owns or…

Q: Okay.

A: …doesn't own.

Q: Are you aware if there's any access to the property? Have you ever been on - - on the west side of Parcel 127 here? Is there any access or is there a creek? Just general neighborhood knowledge.

A: There's a - - the Little Antietam Creek is there. And there's - - there's no bridge there. There's now a sycamore tree, which is - - which is now falling across the creek. So theoretically, you can walk across the, I

guess, I don't know whose property that's on right now. I haven't gone and looked at it. But there's no - - there's no bridge there. There's no other way to access it, no.

Q: Okay, so…

A: That I'm aware of.

Q: Just from your knowledge of the neighborhood, and when we took your deposition in this case, the only way you know that the people that live on Parcel 127 in this area would have to go across this spot at the old railroad track, is that…

THE COURT: Noting the sort of crossing the railroad property from 127 to what I think is not on that map exactly, but we generally understand from other maps is Antietam Drive.

A: I, you know, I've been to that property, I think, twice in my entire life. Once I met with you, and we only walked on - - on one area of the property. Uh, and I was there, and it wasn't even on that property, it was on the - - the railroad. And so I don't know what's over there. I have no idea what's over there, never been there.

Q: Okay, let me - - I was just - - just do you have any common knowledge of the neighborhood of where maybe the only spot of access to this property maybe is…

A: As I said, I…

MR. PEMBROKE: Objection.

THE COURT: Overruled. Mr. Holder, let me stop you here.

Q: Okay.

THE COURT: Are you trying to establish that the only way into 127 is Antietam Drive or the wagon road easement?

Q: That - - that's…

THE COURT: And that there's no other way?

Q: Correct, yes, that it's landlocked.

THE COURT: I think he has answered that he knows of no other way.

Q: Okay. That - - that's fine. And then you say you visited this - - this property. You drove up Antietam Drive to get to the property or did you walk?

A: You - - you invited me there to meet you there on December 31st, 2019. And if I may clarify my answer from before, I don't - - I've never been up there. So I don't know how you acc- the only time I've been there driving is when you invited me there, sir. And I drove up Antietam Drive. That - - that's how I got there. What - - what exists elsewhere on your - - your or Uncle Eddies' purported property, I have no idea. I have no idea. And I have no idea where this purported wagon road is either, no idea.

THE COURT: Okay, he answered the question.

Q: Okay, thank you. And are you aware that your

Parcel 293 is benefitted by a wagon road?

A: I don't…

MR. PEMBROKE: Objection.

THE COURT: Sustained.

Q: Okay. How do you access your property, Parcel 293?

MR. PEMBROKE: Objection.

THE COURT: What's the relevance of how he gets to his property?

Q: If his property's landlocked and it's abutting to the property that's in dispute.

THE COURT: Abutting to what property that's in dispute?

Q: Well he showed it being over here and…

THE COURT: Well, no, he pointed - - he's on the generally the east side of the railroad. He - - he is not abutting the property in dispute. The property - - the only property in dispute in this case is Parcel 3, Young Parcel 3. It's been admitted that Young owns Number 1. It's been admitted that Young owns Number 2.

Q: Okay.

THE COURT: The only piece of property is Parcel - - Young Parcel 3. And he does not abut Young Parcel 3. The objection's sustained.

Q: Okay. Can I have this marked as Defendant Holder

Exhibit Fourteen - - Thirteen.

Q: Mr. Estes, did you write that?

MR. PEMBROKE: May I see it?

THE COURT: Hang on a second. Don't answer the question yet, Mr. Estes. What number is this?

Q: Defense Justin Holder Thirteen.

(Defendant Justin Holder Exhibit No. 13 Marked for Identification)

A: Your Honor, I…

THE COURT: Mr. Estes, you've been handed a document called Justin - - Justin Holder Thirteen.

A: Yes.

THE COURT: And you recognize that?

A: I do.

THE COURT: What is it?

A: I believe that this is an email that I sent to my attorney in my case, Aaron Neal.

THE COURT: Okay, stop. Mr. Pembroke, does that appear to be a - - an email between Mr. Estes and an attorney, Aaron Neal?

MR. PEMBROKE: Your Honor…

THE COURT: From - - from the face of it, can you tell?

MR. PEMBROKE: No, sir. It only - - the only address I see on it is Mr. Estes' email address. There's no

indication of who it was sent to, uh, or who if anybody received it.

THE COURT: Okay. You're indicating that's an email you sent to your attorney?

A: That's - - that's what I believe. I mean I've sent a lot of emails, Your Honor. But just from reading the first - - the first sentence, I believe this is a conversation. And I think it's interesting that…

THE COURT: I know. Just tell me why you think it went to your attorney? Why - - why do you recall that being an email that went to your attorney?

A: Because we had a - - we had in case 430, there's so many cases, I forget the numbers. In my case…

THE COURT: Estes versus Holder is case 430. Right?

A: Correct. We had retained an expert witness named John Dowling. And this was, I believe, a question or statements that I had posed to my attorney regarding the retention, uh…

THE COURT: Okay.

A: …and testimony of the - - of the surveyor. All right…

THE COURT: All right, stop. How do you have that, Mr. Holder?

Q: Produced to me by his attorney and Mr. Estes in discovery under communications relevant to the, uh,

boundary lines.

THE COURT: My concern, I don't care that it was disclosed during discovery. My concern is that it is an attorney-client communication.

Q: I - - I did ask if it was inadvertent. He said, no. He - - he assured me.

THE COURT: I don't care in a case that he - - do you wish to be heard, Mr. Pembroke?

MR. PEMBROKE: Well, Your Honor, it appears to be a privileged communication protected by the attorney-client privilege assuming that Mr. Estes wishes to invoke that privilege. It's his privilege to invoke.

A: And I do choose to invoke…

THE COURT: Mr. Estes, did you disclose that in discovery?

A: I don't - - honestly, there's been so much discovery in that case, uh, that I don't know. I think it may have been - - it may have been disclosed by my attorney pursuant to, I think, Mr. Holder had some cockamamie idea where he wanted to depose my attorney in that case for some reason. And I believe that motion was either or quashed or - - or denied or they worked out some sort of way to - - to give Mr. Holder what he needed so it didn't cost us an arm and a leg to fight in court so.

THE COURT: Did you direct specifically your attorney

to disclose that document in discovery?

A: No, no.

THE COURT: Do you wish to invoke the attorney-client privilege today?

A: Yes. And let - - let me just qualify…

THE COURT: No, stop.

A: Sorry.

THE COURT: You're standing, Ms. Peeples. What would you like to tell me?

MS. PEEPLES: I would just like to add if this perhaps somehow were disclosed to Mr. Dowling, then that would invalidate the attorney-client privilege if this was used in connection with Mr. Dowling's opinion. So I guess the question should be…

THE COURT: Who is an - - who is an expert who's not going to be testifying in this case.

MS. PEEPLES: But it still waives privilege.

THE COURT: Why? Why does it waive his privilege? He did not - - he has testified that he did not direct his attorney to disclose it. He did not specifically direct his attorney to disclose it, and it's his privilege, not the attorney's privilege.

MS. PEEPLES: If - - if - - if that was - - if Mr. Estes directed it disclosed to Mr. Dowling, then that…

THE COURT: He just said he did not disclose it. He

did not direct it to be disclosed.

MS. PEEPLES: Okay.

THE COURT: Okay.

A: If I might add, Your Honor, Mr…

THE COURT: No, you don't need to.

A: Okay.

THE COURT: Give that document back to Mr. Holder. Number Thirteen is not going to be admitted. It's attorney-client privilege. He has indicated he did not direct his attorney to disclose it and he's not waiving today.

Q: Okay. Thank you, Your Honor.

THE COURT: Yes, sir.

A: Your Honor, if I - - if I may just take advantage…

THE COURT: No.

A: …of your little R?

THE COURT: No.

A: I just - - I just wanted - - very well, Your Honor.

THE COURT: No. Just answer questions. Okay?

A: Yes, sir.

THE COURT: All right.

Q: Mr. Estes, do you recog- I'm sorry.

THE COURT: It's okay. What - - have it marked and show Mr. Pembroke. Okay?

Q: Okay. Mr. Estes, do you identify that document for me?

THE COURT: Marked as Justin Holder Number Fourteen.

(Defendant Justin Holder Exhibit No. 14 Marked for Identification)

A: I probably seen this before in a deposition. But, honestly, it looks like a bunch of things scratched on a piece of paper to me. So, uh, I believe if I'm - - if I'm to guess, I think it's a…

MR. PEMBROKE: Objection.

Q: I don't want you to guess, sir.

A: Okay. Have I…

THE COURT: Do you know what that is?

A: It looks like it's a deed composite written by probably, and I can't say probably, it looks like it's a deed composite.

THE COURT: Did you draw that?

A: No.

THE COURT: Next question.

Q: Uh, if he didn't draw it, I - - I thought maybe he did.

THE COURT: Okay.

Q: Okay.

THE COURT: Number Fourteen is not admitted.

Q: On I believe you said it was December 31st, 2019…

A: Mm-hm.

Q: …was the only time you were on Parcel 127. Was that to address a boundary line dispute?

A: There was no boundary line dispute, no. It was to talk about you cutting down the trees on my property, sir.

Q: Okay. Were you - - were you ever made aware after reviewing the title that the title lines that you believe they were deviated from a fenceline?

A: No, no. And that's being litigated in another case. And as far as I'm concerned, I have absolute title to that entire area. And this whole map here even shows that I own on the west side of the creek, sir.

Q: Okay. So were you ever made aware - - did you ever become aware through researching title that the title lines deviated from the fenceline?

MR. PEMBROKE: Objection.

THE COURT: What - - sustained. You have to lay a foundation for where you're talking about.

Q: Yes.

THE COURT: If we're talking on the east of the railroad, the Holder/Estes dispute…

Q: Uh-huh.

THE COURT: That - - that's not relevant to what I'm being asked to decide.

Q: Okay. No further questions for the witness.

END DIRECT EXAMINATION

THE COURT: Okay. Mr. Pembroke, any follow-up?

MR. PEMBROKE: No questions.

THE COURT: Is he excused? Mr. Estes, you're excused. You're free to leave the courthouse.

A: Thank you. Can I stay in the courtroom, Your Honor, and listen to the rest of the testimony?

THE COURT: Yes, you're excused.

A: Very well, thank you.

END TESTIMONY OF BENJAMIN N. ESTES

THE COURT: Counsel, we are ahead of schedule. But I believe I see Ms. Clabaugh in the courtroom.

MR. HOLDER: Perfect.

THE COURT: Are we ready for Ms. Clabaugh then?

MR. HOLDER: I - - I am if she's prepared, Your Honor.

THE COURT: If she's ready.

MR. HOLDER: I'd like to call…

THE COURT: Ms. Clabaugh, we're a little ahead of schedule if you're ready.

MS. CLABAUGH: Yeah, I'm ready.

THE COURT: The next witness will be Attorney Tracie Clabaugh.

TESTIMONY OF TRACIE CLABAUGH, ESQ.

TRACIE CLABAUGH, ESQ., a witness, produced on call by Defendant Justin Holder, first having been duly sworn

according to law, was examined and testified as follows:

BAILIFF: It swivels but it doesn't move back and forth.

A: Oh, it doesn't? So I have to like lean up?

THE COURT: No, you don't need to lean up.

A: Okay.

THE COURT: Don't need to lean up until I tell you.

A: All right, sounds good.

THE COURT: Ma'am, would you state your full name?

A: Tracie Lynn Clabaugh.

THE COURT: Tracie is spelled?

A: T-R-A-C-I-E.

THE COURT: Clabaugh?

A: C-L-A-B-A-U-G-H.

THE COURT: Okay. And what's your work address?

A: 2 South Wisner Street, Frederick, Maryland, 21701.

THE COURT: Very well. Mr. Holder.

DIRECT EXAMINATION

By Mr. Holder:

Q: May I question - okay. Thank you, Your Honor. Mrs. Clabaugh, thank you for coming today.

A: Yeah.

Q: Good morning. What - - what did you - - what do you do for a living?

A: A real estate attorney.

Q: How long have you done that?

A: Twenty years.

Q: Have you always worked at your firm, The Clabaugh Law Firm?

A: No. That's, uh, I've worked there for two and a half years.

Q: Where did you work before that?

A: Uh, Offit Kurman.

Q: How long did you work there?

A: Four or five years. I can't remember, sorry.

Q: And before that, where did you work?

A: Uh, where did I work before that? McMillan Metro. I was there for like five years.

Q: And before that?

A: Oh my gosh, I know I was gonna have to do all my - - sorry.

THE COURT: Hang on a second. She's on the list of approved experts. Right? Okay.

Q: Okay…

THE COURT: So there's - - hang on a second. There's no dispute that she is an expert. She can provide opinion testimony in this courtroom. Right?

MS. PEEPLES: That's correct.

MR. KLINE: Correct.

THE COURT: Okay.

MR. HOLDER: Okay.

THE COURT: And her field would be real estate law, fair?

A: Yes.

THE COURT: Okay. So she is admitted as an expert in this court for this case in the field of real estate law and issues involved with real estate. Okay.

Q: May I approach the witness?

THE COURT: Sure.

Q: Mrs. Clabaugh, I'm gonna hand you a document. It's labeled, "Justin Holder Exhibit Fifteen." Can you identify that document for me?

(Defendant Justin Holder Exhibit No. 15 Marked for Identification)

A: This is a Title Opinion letter for real property located at 25 and 28 Antietam Drive, Keedysville, Maryland, that I prepared on July 30th, 2020.

Q: Move to admit Defendant Justin Holder Exhibit Fifteen.

THE COURT: Any objection?

MR. PEMBROKE: No, Judge.

THE COURT: It will be admitted as Title Opinion July 2020. And that's for the Antietam Drive properties, right, the…

Q: Correct.

(Defendant Justin Holder Exhibit No. 15 Admitted Into Evidence)

THE COURT: The yellow house and the gray house, 25 and 28 Antietam Drive?

A: 25 and 28 Antietam Drive, yes.

THE COURT: Good.

Q: Okay. And can you summarize the letter for the Court?

A: So I was asked to provide an Opinion of Title for the fee simple title ownership of the property, which is defined as 25 and 28 Antietam Drive in Keedysville, Maryland. The question that I was answering was whether a right of way for that property, 25 and 28 Antietam Drive, Keedysville, existed over a wagon road that was referenced in the Abstract of Title for that property. And if such right of way exists, whether such right of way had been terminated or extinguished by an instrument of record.

Q: Okay. And what - - what did you find?

A: And I'm just gonna read this because we've already put this into the record once two years ago. But the ab-…

THE COURT: Which record?

A: District Court for a case - - I don't - - I forget which case.

THE COURT: Okay but not - - not this record?

A: Yeah, not - - not at this level, yeah.

THE COURT: Just…

A: At the District Court, yeah.

THE COURT: Okay, go ahead.

A: So it's on the record already. But…

THE COURT: Not my record.

A: Not your record though, no.

THE COURT: Okay.

A: So I certified that I had examined the land and court records through an abstractor. I - - we had Executive Abstracts, Incorporated, do the abstract. For not less than 146 years through July 17, 2020, since this was about obviously two years ago. And my - - my opinion was that the property was conveyed onto Deena Holder by a deed at Liber 5824, folio 352, and then unto Deena Holder by another deed, 5827, folio 370. And so a part of my letter was that it was my opinion that Deena Holder is possessed of good and marketable fee simple title to the property.

And then also by way of the Abstract of Title, the property was subject to a right of way. And that was more particularly described as a wagon road and was further described and referenced in various deeds of record. It was initially created in 1872 by a predecessor in title. And then subsequent deeds of record either referenced or included description of such access of right of way and/or

the subject property to and together with covenants, easements, rights of way and restrictions of record.

So based on that examination of title, it was my opinion that the property was subject to the right of way, and such right of way is a valid means of ingress and egress for the property. And then also it was my opinion that the right of way had not been extinguished or terminated by an instrument of record. And as the dominant parcel, the owner of the property, her invitees, including, but not limited to Justin Holder at the time, were entitled to use the right of way as a means of ingress and egress to and from the property.

Q: And the next page, I guess, after your letter, is that your title of chain or the…

A: Yeah, so Executive - - Executive Abstracts, Inc., we did the - - the - - the search for us through the examination date was examined through 7/17/2020. And Mark Hamrick was the examiner. And he - - that's - - that's what I'm looking at.

Q: Oh, I'm sorry.

A: Is the abstract.

Q: Maybe there's a - - is there like a handwritten title? Yeah, that.

A: Oh, yeah. So he also put the handwritten title. That was his - - he does the coversheet. And then

there's…

Q: Can you show…

A: …a handwritten.

THE COURT: He handwrote it then?

A: Yeah…

THE COURT: I - - I get it.

A: …he handwrites it too, yeah.

THE COURT: Yeah.

A: Yeah. These - - that's not mine.

THE COURT: Yeah.

Q: Okay.

A: Mm-hm.

Q: And is there a tax map attached to that somewhere?

A: Yeah. Normally when we do - - we do the real property data search, the SDAT information and then the tax map is also - - that's how - - that's how all my title work is for both of them, yeah.

Q: And does that tax map, is it - - does it show basically this portion of what's Plaintiff's Exhibit Ten.

A: I have to stand up. I can't see.

Q: Sure. Come down and just - - and I'm just trying to put what you did on the map here for the Court. Parcel 127 and Parcel 414 up in the…

A: Oh, yeah, here it is. It's on this one, yeah. Yeah.

Q: And do you see those parcels?
A: Yes.
Q: Okay.
A: They're on here.
Q: And - - and they're where I'm pointing in the top right corner of this tax map, Parcel 127 and Parcel 414, labeled as Plaintiff's Exhibit 10?
A: Mm-hm, yes.
Q: Okay. And when you were - - you were do - - reviewing the title, you only had reviewed it for a very specific purpose. Uh, and that was for you - - you mentioned earlier being on the record, a peace order dispute you…
A: Mm-hm.
Q: …had testified about, the record owners of Lot 9, Scott…
A: Mm-hm.
Q: …and Christine Morral.
A: Mm-hm, yes.
Q: Okay. And when you looked at this, did you review this plat?
A: 8293, yes.
Q: Okay. And was there anything upon reviewing this plat that - - that jumped out at you, uh, that you would see normally as a title expert?

A: Uh, well a lot of things jumped out at me when I review that plat. I mean what do - - I mean…

Q: That - - that…

A: I have a copy of it here.

THE COURT: Be more specific…

A: Yeah.

THE COURT: …Mr. Holder.

Q: That led you to your conclusion that an instrument of record had not extinguished the…

A: Well - - hold on for a second. I think that one has - - so the - - up at the top, the vicinity map says, "Abandoned railroad." So, you know, when I'm reviewing, I do a lot of due diligence. Let me just put it this way, my experience is doing due diligence for builders and developers. When I see that something on a plat says, "Abandoned railroad," and I don't see something that says, "Abandoned wagon trail," or, "Abandoned road," or abandoned whatever, because you have to go through a process to abandon those. Then…

THE COURT: Process to abandon an easement?

A: Process to abandon an easement, a process to abandon a lot of items. So if I don't see it my report of title and I don't see it on a plat…

THE COURT: Mm-hm.

A: …then I have to - - my assumption is that it's not

abandoned. Like that's my - - I mean in - - in this case, I look at it a - - a lot, uh, for due diligence for builders and developers. And in this case, I don't see anything that says, "Abandoned wagon trail," or "Abandoned private access," or, "Abandoned easement," or anything like that on it. But I did see that we - - they did mark the railroad was abandoned. So if other items had been abandoned, an engineer probably should have put on the plat something else that was abandoned.

THE COURT: Okay.

A: That's just been my experience.

Q: I'm gonna hand you what was Plaintiff's Exhibit Fourteen. It's actually the last page of Plat 8292 - - it's 8295.

A: Oh, yeah, C404, okay.

Q: And at the bottom, there's a note section.

A: Mm-hm.

Q: I think it's note number 2 or 3 about the title work that…

A: Yeah, so note number 4 says, "The plat and survey were prepared without the benefit of a title report, none furnished, and therefore, it may not necessarily indicate all encumbrances on this property." So that is most if not all plats have this note on it.

Q: Okay.

A: Unless you're doing subdivision work, uh, and the county or your jurisdiction requires you to place an easement, like a common driveway easement or water and sewer easement or a storm water management easement as a county approval for the plat, they normally don't look at, uh, they being the engineer, surveyor, doesn't normally look at title work.

Q: Okay. And when you examined the title, uh, did you find the wagon road encumbered this area behind Lot 9 with the crosshatched markings that follows this wire fence?

A: Do you have a - - sorry, I can't see all the way up there. I think I have a copy of it.

THE COURT: You may - - you may step down…

A: Okay.

THE COURT: …Ms. Clabaugh, if you wish.

(Witness does as instructed.)

A: I can see this.

THE COURT: What are you asking, Mr. Holder?

A: Yeah, what are you asking me?

Q: If you found that it followed the - - the railroad right of way line of this wire fence…

A: Yeah. So that was, yeah, so the wire fence part of it, I mean they did show the wire fence, which they're supposed to be showing items like that. Uh, and, you

know, if - - if I was looking at this plat for a client prior to any of these lots being sold, I would say that this - - that all of this wire fence, if any of it's on somebody else's property, you should have had that - - a quiet title action at that time done. Like and this obviously wasn't done. So I don't - - I don't know why that wasn't done. But when I make recommendations for my clients, if that was my - - the builder or developer was my client, that's what I would recommend. I'd be like - - I would - - I would have them look into it and do whatever they had to do to clean that up. So there's something here that shouldn't be here.

THE COURT: She's pointing to the edge of…

A: So…

THE COURT: …Lot…

A: It's…

THE COURT: The - - the back of Lot 9…

A: Yes.

THE COURT: …and 10.

A: Where the wire fencing goes. And…

THE COURT: Mm-hm.

A: …on this particular side.

THE COURT: But the plat shows ownership of Lot 9 and Lot 10 outside of that fence doesn't it? Those lot owners bought out to the property line. Correct? Just the way -

- if you could stay up there.

A: Yeah, yeah, yeah. No, I mean…

THE COURT: Right?

A: Yeah, I mean they bought…

THE COURT: Lot - - the owner of Lot 9 and Lot 10 own…

A: Well…

THE COURT: …out to the property line. There is some hatched area probably storm water easement inside their property line.

A: Mm-hm, yes.

THE COURT: Right? But the interior dashed lines of Lot 9 and Lot 10, that's probably the building setback line.

A: Uh, yeah. The dash lines are the BRLs, building restriction lines, yeah.

THE COURT: I - - sorry, I call them building setback. You're right.

A: Yeah.

THE COURT: Building restriction line. But the real property line is the darker lines…

A: Yes. So they do have a storm…

THE COURT: …on the far exterior of the lots.

A: Yes.

THE COURT: Right.

A: But that doesn't mean that that's not correct.

Like that doesn't mean that there might not - - there - - there could be other items on there like the fence, like the wire fence. Who - - I don't know who own - - I mean - - you know what I mean? Like someone put the wire fence there.

THE COURT: Right.

A: Uh, and someone could say, "That's my wire fence." Because - - and I'm just doing by…

THE COURT: And as a…

A: …experience.

THE COURT: Understood.

A: Yeah.

THE COURT: And as an attorney…

A: Mm-hm.

THE COURT: A title attorney, an attorney representing developers…

A: Mm-hm.

THE COURT: …your recommendation to the developer of that property seeing this plat…

A: Mm-hm.

THE COURT: …is - - would have been…

A: Yes.

THE COURT: …, "Hey, you got to take care of this fence."

A: Yes, yes. You have to figure out what…

THE COURT: "You better figure it out."

A: Yes. What…

THE COURT: Yeah.

A: …what is going on here, yeah.

THE COURT: Understood.

A: Mm-hm.

(Whereupon the witness returns to the witness stand.)

Q: If you have a property in fee simple that's burdened by an easement, is - - can it only have one easement or could you have multiple easements over the same fee simple as long as they agree potentially?

A: Uh, I don't know really what you're asking. I mean a property can have multiple easements on it. Uh, like the…

Q: Okay.

A: Yeah, I mean you can have a storm drain…

Q: Well first off, we have a storm - - yeah.

A: You can have a storm drain easement. You can have storm water easement. You can have water and sewer easements. I mean the - - the storm drain ease- that's obviously something that the County required in order for the plat to be recorded. So that's not - - unless it was already there prior to the plat. But normally, any type of storm drain easements or anything like that, I don't - - does it have a Liber and folio on it or no?

Q: Uh, no. It just…

A: Yeah. So Washington County is very - - it's - - it's different than Frederick County. Frederick County makes you do all of your approval easement agreements prior to plat recordation. You put them on the plat and then that's it. However, if there are older easements, like blanket, uh, utility easements like old Potomac Edison easements or anything like that, sometimes those don't get put on a plat. So you have to rely on looking back on all of your title and everything else in order to understand what's on your plat. If you really want something, then you order an ALTA survey. And the ALTA survey, that's when you give an engineer all of your title work and you say, "Hey, go and do this. Go out and determine where all of these lie." And I don't know if they did that for this or not. That's something that you do prior to purchasing property. So I don't know if this developer did it.

Q: So would it, just to sum up for the Judge…

A: Mm-hm.

Q: …would it be - - if you saw the wire fence, would you say, "Hey, go get an ALTA survey for this?"

A: Yeah. I mean if that was my client that's - - I mean that's what I do on a daily basis for my clients.

THE COURT: Fifteen is her Title Opinion. Oh,

Plaintiff's.

Q: Plaintiff's.

THE COURT: Show me what - - it's the Hutzell declaration, got it.

Q: Here's - - and I know this has been two years. So if you just have a minute to review that.

THE COURT: She's reviewing Plaintiff's Exhibit Fifteen, which is the Hutzell Declaration.

A: Okay.

Q: Can you explain who they would have given the dollar to in that deed?

A: What?

THE COURT: Who the grantor…

Q: I think there's a dollar - - yeah, there's a dollar consideration given to the grantor. Could you…

A: Well this is actually a declaration. So it's not - - there's - - so when you have a declaration, you don't have a grantor and grantee. The declaration is something like if I own property, and I want to declare something for the right of others to use it, then that's what I do. I do a declaration. If I had - - if I owned a property and I wanted Mr. X next door to do - - then I'm the grantor, he's the grantee. And then that's how we do a right. So normally for a declaration, that's when like, for example, the - - the developer, if they want to put in

easements or anything else on, it's a declaration because you have one declarant and you're establishing whatever type of easement for whomever else. Normally in a subdivision, it's for everybody in the subdivision to use or it's for, you know, individuals to use so.

Q: Is it possible to declare an easement over somebody - - property you don't own?

A: Is it - - say that again.

Q: I mean is it - - is it effective? If you declare an easement over property that you don't own the fee simple title to?

A: No, because you don't own it.

Q: Okay.

A: I mean that's what it's saying right her in the recital, "Whereas the Declarant is the owner of 25, Declarant's Number 28." If that's not true, then it's not true. Then how can you…

Q: Okay. And I believe - - may I see the document?

A: Mm-hm.

Q: I'm sorry.

A: That's okay.

Q: Okay, and then where it says, "First," can you read that?

A: "First, this perpetual easement shall be for the purpose of providing Declarant ingress and egress for Main

Street in Keedysville over the approximately 12-foot wide drive known as Antietam Drive extending from Main Street and over 25 Antietam to 28 Antietam. And Declarant reserves the right to amend this easement from time to time to carry out the intent."

Q: Okay. And I don't know if you're - - are you aware on this map if Main Street is - - is to the west of, I don't know if you're familiar with Keedysville or not…

THE COURT: It's generally to the top of that map.

A: Yes. I see Antietam at the top of it.

Q: Oh. This - - this road I'm pointing to…

A: Yes.

Q: …going diagonal would generally be Main Street.

THE COURT: Which exhibit? Just slow down.

Q: This is - - I'm sorry…

THE COURT: Slow down, Mr…

Q: Exhibit Number Ten.

THE COURT: Just slow down. Okay, on Exhibit Number Ten, which is the tax map…

Q: Yes.

THE COURT: …you're pointing to the left side and the large road.

Q: Large road that goes kind of across the corner of the left side is Main Street. And then this road is Dogstreet.

A: Mm-hm.

THE COURT: Which goes down the map.

Q: Which goes down the map. And then Parcel 127's in the northeastern quadrant here. And this is the old railroad.

A: Mm-hm.

Q: And the wagon road went up here, followed the Cost/Keedy line, went to Dogstreet.

THE COURT: No.

Q: Followed down to…

THE COURT: No, don't - - don't…

Q: Okay.

THE COURT: Don't you tell her where…

Q: Okay.

THE COURT: …the easement went.

Q: Okay.

THE COURT: And don't say that it went to Dogstreet.

Q: Okay.

MR. PEMBROKE: Thank you, Your Honor.

Q: Uh…

THE COURT: What - - what's your - - what's your question about…

A: About this.

THE COURT: …Exhibit Number Fifteen as it relates to the map?

Q: So I was trying to build some foundation for it.

THE COURT: Now she - - she has her bearings now, I think.

Q: Okay. Okay, so the original easement, the properties came out this road and turned left. Correct?

THE COURT: You're identifying coming out of the…

Q: What would be the Holder…

THE COURT: The Holder…

Q: …across the railroad.

THE COURT: …properties.

Q: And they would turn left.

A: Okay.

Q: And that easement says they want to come out and the want to turn right.

A: Okay.

THE COURT: You're saying the easement of Exhibit - - Plaintiff's Exhibit Fifteen suggests…

Q: Exhibit Fifteen.

THE COURT: …that they turn right instead.

Q: Suggests that they would turn right instead. Is that fair?

A: Uh, hold on here. "For ingress of a known as Antietam Drive extending from Main Street and over 25 Antietam and 28." So Antietam is at the top, yes.

Q: This is labeled, "Antietam Drive."

A: So that would go to - - yeah. So that would - - yes.

Q: Okay. And in your professional opinion, can a property be benefitted by two different easements at the same time?

A: Yeah. It can be benefitted by many easements.

Q: Okay.

A: I mean - - yeah.

Q: Thank you. No further questions, Your Honor.

END DIRECT EXAMINATION

THE COURT: Okay. Mr. Pembroke, do you have any questions in cross-examination…

MR. PEMBROKE: Good morning.

A: Good morning.

THE COURT: …for Ms. Clabaugh?

CROSS-EXAMINATION

By Mr. Pembroke:

Q: Did you ever walk the property?

A: No.

Q: Based on the title work that you've done, looking at Plaintiff's Exhibit Thirteen, is it your opinion that the wagon road encroached upon the property of Lots 9 and 10 of Stonecrest?

THE COURT: If you wish to step down, you may.

Q: Here and here?

A: Yeah, I mean it - - I think it did. So I mean…
Q: Can you…
A: …it's…
Q: Can you - - can you give an opinion on how…
A: Well this is - - this is…
Q: …how far over the lot?
A: Well, no, I can't give an opinion on that because I looked at just my title work. So I didn't look at title work for any of the adjacent properties. So my title work that I got from an abstractor. So I didn't do it myself. I - - I - - we hired an abstractor. They did the title work. I did the Title Opinion letter based on that. My Title Opinion was based on those three items that I said at the beginning, the - - to - - as to whether or not the wagon road had been terminated or extinguished. So, yeah, I haven't walked the property. So I don't know what's out there. I don't know if the wagon road is actually, you know, in- interior of that. All that I know is that what the title says and what it doesn't say. We don't have an express termination or abandonment of the wagon road.
Q: Would it be your opinion that the declaration…
A: Mm-hm.
Q: …that you just saw…
A: Mm-hm.
Q: …from the Hutzells for Antietam Drive…

A: Mm-hm.

Q: …is that an indication of abandonment of whatever access may have been over the purported wagon road?

A: No.

Q: Why not?

A: Because there's no abandonment or termination of the wagon road. It didn't say in that declaration, "I hereby terminate all of their access to the property."

Q: You indicated you only - - is it fair to say only the - - only the chain, uh, in for 28 and - - 25 and 28 Antietam were - - were reviewed by you and your abstractor?

A: Yes.

Q: So you did not run the chain of the servient estate?

A: No.

Q: And your specific task, I believe you stated, was to give an opinion as to whether or not the wagon road purported right of way had been distinguished by an instrument of title?

A: Extinguished, yeah.

Q: Extinguished.

A: Yes.

Q: Okay. There are other ways to extinguish a right of way other than by an instrument of title. Is that

correct?

A: Yeah, there's a process.

Q: Okay. What other ways are possible?

A: Uh, well it depends on the jurisdiction. I mean if you have…

Q: In Maryland.

A: Well if you have a, you know, like if you have SHA road, a State Highway Administration, they have a process by which to extinguish roads. The Frederick County, uh, I'm more familiar with because I do more work in Frederick County, they have a process by which to extinguish roads or to close roads. We have an alter, close, uh, road process that is statutory but is in all the various jurisdictions because I just actually worked on one in Frederick County. Uh, Frederick County has a policy by which they follow the statutory law for that.

Q: Can it be terminated - - it could be - - can be terminated by abandonment? Correct?

A: Uh, you can. But if you have a private road or if you have a right of way, uh, you need to, in my opinion, have an instrument of record to terminate it.

Q: What about by adverse possession of the servient estate?

A: I guess you could do it that way. But, again, an adverse possession, there would be some type of an

instrument of record that would tell you, yes, there's adverse possession there. So if someone adversely possessed it and went and quieted title and something, you know, came about, normally what would happen would be after quiet title, the order would say from the judge, you have to record an instrument of record to say to, you know, clarify who owns - - what's going on. I mean I don't know in this case. But…

Q: But if - - okay. But hypothetically, if - - if quiet title action had not been commenced or completed…

A: Mm-hm.

Q: …there would not be such an instrument in existence yet.

A: Yeah, I mean - - yeah. I mean my job is to look at what's on record. Like I can't just in my head, you know, think of other things like - - like that. I mean instruments of record, I didn't see any other ones.

Q: All right, thank you. No further questions.

END CROSS-EXAMINATION

THE COURT: Any re-direct for Ms. Clabaugh before she's excused? You don't have any of the exhibits?

A: No, this is mine.

THE COURT: Got to make sure.

A: Yeah.

THE COURT: You walk out the door with an exhibit…

A: Yes.
THE COURT: …that's a problem.
A: That's a problem. Right?
THE COURT: Yeah.
A: No, I don't have any other ones.
THE COURT: I'll be calling you. Any other questions?
MR. HOLDER: No further ques- no further questions. Ms. Clabaugh, thank you very much.
A: Okay, thank you.
THE COURT: Okay, Ms. Clabaugh, you're excused.
A: Thank you.
THE COURT: Thank you for coming up today.
A: Thanks.
END TESTIMONY OF TRACIE CLABAUGH, ESQ.
THE COURT: Okay.
MR. HOLDER: Okay, so, Your Honor, that went a lot faster…
THE COURT: That went a lot faster. So let's take a moment just to think about where we are. 10 o'clock…
MR. HOLDER: Your Honor, may I have a suggestion?
THE COURT: Yes, sir.
MR. HOLDER: I have certified copies of Land Records I was going to go through the process of putting them in with Mr. Nagle. But I…
THE COURT: And so here's where we are, we have Mr.

Estes is completed. Ms. Clabaugh is completed. We're waiting for Matt Hull, who is probably an hour out. And then we have Mr. Nagle. Mr. Nagle's not here yet, I would presume. Right?

MR. HOLDER: I - - I had Mr. Nagle scheduled for 1:00. I could…

THE COURT: No, no, no. Okay, why don't we do some records housekeeping here. If you have certified records to get into evidence, let's do it now rather than with Mr. Nagle if there's no objection. Let's do each record one at a time. And then if there's objection that I sustain, we'll do them through Mr. Nagle. And then we'll take a break. We'll figure out where we are. Okay?

MR. HOLDER: Okay.

THE COURT: Okay. Why don't you come to the well of the courtroom. Before you hand each document to the clerk, I want you to show each doc- show the document to Mr. Pembroke first.

MR. HOLDER: Please mark Defendant Justin Holder's Exhibit Sixteen.

(Defendant Justin Holder Exhibit No. 16 Marked for Identification)

THE COURT: Okay, why don't you work with Mr. Pembroke on your next document. The clerk will hand me the document, and I'll review it. Mr. Pembroke, is there

going to be any objection to Sixteen?

MR. PEMBROKE: There is, Your Honor. At this point, relevance?

THE COURT: Okay.

MR. PEMBROKE: It appears…

THE COURT: It appears to…

MR. PEMBROKE: It appears that that deed predates the 1872 deed, which purportedly establishes the access route whether you call it a license or right of way…

THE COURT: Okay.

MR. PEMBROKE: …or use of. So I don't know what…

THE COURT: Mr. Holder, what date is this number Sixteen?

MR. HOLDER: I think it's 1887. That should be Nicodemus deed for the Parcel 414.

THE COURT: I'm reading it as 1883.

MR. HOLDER: 1883, okay, I'm sorry.

THE COURT: Okay. It's all right.

MR. HOLDER: Correct.

THE COURT: I have it as Land Record 84, pages 134 to 135.

MR. HOLDER: That's this guy.

MR. PEMBROKE: What's the parcel number?

MR. HOLDER: Parcel 414.

THE COURT: So it's not one of the Holder parcels or

Uncle Eddie parcels?

MR. HOLDER: It's - - okay, you got - - remember the conveyance. Deena Holder conveyed everything to Uncle Eddie and kept this parcel for herself.

THE COURT: Keep - - kept which parcel?

MR. HOLDER: Uh, she - - the…

THE COURT: Because there was a subdivision of Parcel 127.

MR. HOLDER: That's - - it was - - it was more of a lot line reconfiguration.

THE COURT: Understood.

MR. HOLDER: There was three here. There's three at the end.

THE COURT: Okay.

MR. HOLDER: So…

THE COURT: But what does the Nic- okay, so show me the Nicodemus property.

MR. HOLDER: Right here.

THE COURT: Okay. What does the Nicodemus deed of 1883 have to do with Young Parcel 1, 2 or 3 or the wagon road easement?

MR. HOLDER: So when you buy a piece of property, the way you get to the piece of property is implied by what's visually on the ground at the time. There's been relevant testimony in the case that the only visual way was the

wagon road. That deed says it's conveyed together with all the rights, titles, waters and ways. And it's the predecessor to…

THE COURT: Okay.

MR. HOLDER: …Uncle Eddies' land.

THE COURT: So ultimately what you would be arguing in closing is that the Nicodemus property, which is not any of the Holder properties, had an implied easement in 1883?

MR. HOLDER: Correct.

THE COURT: Number Sixteen is not admitted. That is not relevant to the case, and it is way beyond the testimony that has been presented. There's no - - no indication that that property was benefitted.

MR. HOLDER: Your Honor, I would object. It's a certified public record.

THE COURT: No, it's not admitted. It's not admitted. It's not relevant. That's the decision I'm making. And that was what, Justin Holder Sixteen?

MR. HOLDER: I'll mark that Exhibit Seventeen.

THE COURT: Justin Holder Seventeen.

(Defendant Justin Holder Exhibit No. 17 Marked for Identification)

THE COURT: And, Mr. Holder, what is Justin Holder Seventeen? It's labeled, "Confirmation and Declar- Declaration of Recorded Perpetual Right of Way," Liber

6485, page 250, January ’21.

MR. HOLDER: Yes. It’s a declaration of - - sort a recital of some of the notes that are on the Stonecrest property. It was mailed, I believe, to Christine Morral by Deena Holder in this case subjecting the property that I’m claiming a piece of a title to to a right of way, declaring there’s a right of way there.

THE COURT: Who prepared this?

MR. HOLDER: Deena…

THE COURT: Who drafted this?

MR. HOLDER: I believe Deena Holder prepared it.

THE COURT: No. Who drafted this? Deena Holder didn’t draft this.

MR. HOLDER: I believe the deed speaks for itself, Your Honor.

THE COURT: Who drafted this?

MR. HOLDER: I - - I don’t - - I’m not aware.

THE COURT: Did you draft this?

MR. HOLDER: No, sir.

THE COURT: Did Adam Greivell draft this?

MR. HOLDER: Not to my knowledge.

THE COURT: Who drafted it?

MR. HOLDER: Sir, I’m not aware of who drafted the deed.

THE COURT: We’re going to take a break, five minutes.

(Whereupon this matter went into recess from 10:02 a. m. until 10:32 a. m.)

THE COURT: We're back on the record, Jeffrey Young versus Justin Holder, et al., C-21-CV-20-371. I think we were in the middle of trying to get some exhibits into evidence. Is that where we're continuing?

MR. HOLDER: Yes, Your Honor.

THE COURT: Okay. Mr. - - are you still seeking to enter Defendant's Exhibit Seventeen?

MR. HOLDER: And - - and, Your Honor, could I - - could I clear up our conversation before? I - - I didn't understand your question. Deena Holder was the party to the instrument.

THE COURT: Right.

MR. HOLDER: I - - I took it - - I physically took it to Land Records and recorded it with her. As her husband, I helped her with some of what she was trying - - I showed her where the language was on the Stonecrest plats. But, you know, ultimately, she cut and pasted it, put it all together herself. And that - - that was her intention as a party to the instrument.

THE COURT: So you and Mrs. Holder drafted this?

MR. HOLDER: Yes.

THE COURT: Okay. You didn't have an attorney draft it for you?

MR. HOLDER: No, I did not have an attorney…

THE COURT: Okay. That's all I'm gonna…

MR. HOLDER: …draft it for me. And - - and…

THE COURT: And you didn't have a - - a realtor, nobody else did this Exhibit Seventeen other than you and Mrs. Holder?

MR. HOLDER: Correct. And it's just what we read in the Land Records, the - - the things on various deeds. Uh, she was upset that nobody would recognize she had a right of way. She wanted to put it on the record.

THE COURT: Okay. So it is Deena Holder as the owner of 25 and 28 Antietam Street declaring that she has an easement?

MR. HOLDER: Yes. And then we had them mailed to the owners on, uh, Stonecrest that referred by the easement so that they would be on notice that there was an easement there. And that was the intention of it. I - - when you asked me, I - - I said, "Well she was the party to the instrument." So like the official answer is she drafted the deed because she signed it. But, yes, I did help her.

THE COURT: No, that's not the official answer. The official…

MR. HOLDER: I realize that now.

THE COURT: …answer is who took the time to put these words to paper? Who was the scrivener…

MR. HOLDER: We - - we both were.
THE COURT: …of the deed?
MR. HOLDER: We both worked together on it. And…
THE COURT: Okay.
MR. HOLDER: …I - - I should have been more candid with you. I just didn't understand the question completely. So I - - I apologize for wasting the Court's time there.
THE COURT: Okay, Mr. Pembroke, now that we understand what Defendant's Exhibit Number Seventeen is, do you object to the admission?
MR. PEMBROKE: If I'm - - I just want to make sure I have the numbers correct.
MR. HOLDER: Mr. Pembroke, he's looking at the one I previously…
THE COURT: I'm sorry, Mr. Pembroke, I have - - it's called, "Confirmation and Declaration of…
MR. PEMBROKE: Oh.
THE COURT: …Recorded Perpetual Right of Way, Liber 6485…
MR. PEMBROKE: Oh.
THE COURT: …folio 250 at…
MR. PEMBROKE: Yes, Your Honor.
THE COURT: You object?
MR. PEMBROKE: Yes, sir.

THE COURT: And the objection is?

MR. PEMBROKE: Relevance.

THE COURT: What is the relevance of a confirmation…

MR. HOLDER: I - - I don't think…

THE COURT: …or declaration by Denna Holder that is filed roughly three months after the lawsuit in this case was filed? How - - how can she after the lawsuit is filed declare in Land Records that she has an easement? Why is that relevant to the decision I have to make?

MR. HOLDER: It - - I'll probably over - - I don't - - I don't think that - - I'll withdraw it. I don't need to overburden…

THE COURT: I'm - - I'm willing for you to argue to me. It's okay.

MR. HOLDER: I - - I just thought it stated all the covenants. Uh, and it just clarified to the - - the people in the development, "Hey, even though you bought your land, there's covenants that say you can't have fences here. There's covenants say that my…

THE COURT: Why is that - - what is that Deena Holder's call to tell the owners of that neighborhood where they're allowed to have fences or not have fences? I want to understand the relevance of the document.

MR. HOLDER: Well without - - I'll proffer to you that I think she's very upset at the way I was being treated

trying to survey and maintain the right of way. She felt like we were just being bullied by everybody. And she wanted to actually have something in the record that she could show people, "Look, this is - - this is a real right. I know you're saying it's not on a servient estate, but it doesn't have to be. You know? I have a right to go over - - I don't - - I don't have to record it on servient estate, but I want you to know this is where I'm basing my legal opinion or my legal conclusion that I've made on my right of way being valid over your property." This…

THE COURT: Okay.

MR. HOLDER: "These are the rights I'm asserting." And at that point, we weren't in litigation with the Morrals. We weren't in litigation…

THE COURT: No, but you were in litigation with Mr. Young, who is seeking to quiet title to your allegation that there was an easement. After that lawsuit was filed, after the litigation has started, Mrs. Holder goes into Land Records and files a declaration that she has an easement. And, therefore, she gets to tell people that they have to knock - - knock down, "Get ready. You're gonna have to knock down your fences." Why is it - - why is it relevant to the decision I have to make that she went in after litigation started and filed this document?

MR. HOLDER: Well with all due respect, our position is the Complaint doesn't assert a claim against Ms. Holder for an easement. Her name's not even listed. The easement's not listed.

THE COURT: It seeks - - it seeks to clear any claim of cloud of title by quieting title.

MR. HOLDER: And those documents were only sent to the owners of Stonecrest, who weren't named as parties in this current litigation.

THE COURT: Well here's what I'm gonna do, out of an abundance of caution, I'm going to admit Seventeen because it is a Land Record. And that's the only reason I'm admitting it. I will determine when I deliberate whether I think it's relevant to the decision that I have to make. I will give it the weight that it is due.

THE COURT: Do you understand?

MR. HOLDER: I - - I do understand that, Your Honor.

THE COURT: Very well. Seventeen will be admitted.

(Defendant Justin Holder Exhibit No. 17 Admitted Into Evidence)

THE COURT: Other documents? Is Mr. Nagle here yet? Or who's next?

MR. HOLDER: Mr. Hull is gonna be here…

THE COURT: Oh, we're waiting for Hull. Yeah, okay.

MR. HOLDER: Yes. This is going to be marked as

Exhibit Eighteen.

(Defendant Justin Holder Exhibit No. 18 Marked for Identification)

MR. HOLDER: That's a…

THE COURT: Okay.

MR. HOLDER: …same document you saw but…

THE COURT: So the next document is Defendant Justin Holder's Exhibit Eighteen. Mr. Pembroke has reviewed this one. This is Land Record EO146, page 57. What is this purporting to be?

MR. HOLDER: This is basically the same thing that you just looked at for Deena Holder but 100 years ago, uh, confirming a right of way. That is the wagon road to Slifer from Baxter's, uh, the estate of Baxter's. It would have been about 1915, which - - which Baxter was a predecessor to 25, the yellow house, Your Honor.

THE COURT: Mr. Pembroke?

MR. PEMBROKE: Your Honor, it is in the chain so…

THE COURT: Okay.

MR. PEMBROKE: …and is certified.

THE COURT: Very well. Defendant's Eighteen is admitted.

(Defendant Justin Holder Exhibit No. 18 Admitted Into Evidence)

MR. HOLDER: Defendant's Nineteen. He's actually

looked at all these. These are the Adam Greivell quitclaim…

THE COURT: Just hand them one - - one at a time to the clerk. Okay, what's been marked as Defendant's Exhibit Justin Holder Nineteen is a - - purports to be a quitclaim deed from Stonecrest Development, LLC, to Justin Holder, Liber 6370, folio 249.

(Defendant Justin Holder Exhibit No. 19 Marked for Identification)

THE COURT: Mr. Pembroke, any objection to the admission of Justin Holder Nineteen?

MR. PEMBROKE: No, sir.

THE COURT: Very well. Nineteen is admitted.

(Defendant Justin Holder Exhibit No. 19 Admitted Into Evidence)

THE COURT: What has been marked as Defendant's Exhibit Justin Holder Number Twenty purports to be a quitclaim deed from Jennifer Butts Baker, who we have been calling Jennifer Butts in this case, to Justin Holder dated November 3, 2020, Liber 6414, folio 219. Any objection?

MR. PEMBROKE: No, sir.

THE COURT: Number Twenty is admitted.

(Defendant Justin Holder Exhibit No. 20 Marked for Identification & Admitted

Into Evidence)

THE COURT: Defendant Justin Holder Exhibit Twenty-one, a quitclaim deed from Jennifer Butts Baker to Justin Holder dated June 22, 2021, Liber 27- Liber 6729, folio 365. Mr. Pembroke, any objection?

MR. PEMBROKE: No, sir.

THE COURT: Number Twenty-one is admitted.

(Defendant Justin Holder Exhibit No. 21
Marked for Identification &
Admitted Into Evidence)

MR. HOLDER: Your Honor, that one's a little different. I wrote that (unintelligible) a party.

THE COURT: Defendant Justin Holder Exhibit Twenty-two purports to be a quitclaim deed from Charles Blancato and Susan Blancato to Justin Holder dated May 2, 2022, recorded at Liber 7002, folio 370. Mr. Pembroke, any objection?

MR. PEMBROKE: I don't - - objection would be as to the relevance.

THE COURT: Recognizing that I will give it the weight that it is due, Twenty-two is admitted. But I will decide what relevance it holds in the case.

(Defendant Justin Holder Exhibit No. 22
Marked for Identification &
Admitted Into Evidence)

MR. HOLDER: This is basically the chain of title from the Butts, 659580, until Stonecrest. There's court Land Records total here.

THE COURT: Okay.

MR. HOLDER: It's the Da- it's the Butts to Davis, Davis to Nancy Shatto.

THE COURT: Understood. Defendant's Justin Holder Exhibit Twenty-three appears to be a deed from Nancy Shatto, S-H-A-T-T-O, as the grantor, to Thomas Davis dated September 1996 recorded at Liber 1367, folio 1073. Mr. Pembroke?

(Defendant Justin Holder Exhibit No. 23 Marked for Identification)

MR. PEMBROKE: Your Honor, I would object. I don't see the relevance of - - of the document.

THE COURT: What's the relevance of the Jennifer Butts to Stonecrest chain?

MR. HOLDER: It is in the description, she conveys binding on Jeffrey Young's land in 1996. So…

THE COURT: At 19- what do you mean at 1996?

MR. HOLDER: And - - and the conveyance is in 19- I'm sorry…

THE COURT: '88.

MR. HOLDER: Okay, Mr. Young in 19- in 1988, we talked to Mr. Joliet, his deed, uh, conveyed in two lines said

with the Butts deed lot. In 1996, she conveys back and she says with the Young line. So if the title to the adverse possession hasn't been presented in 1996, she's really conveying - - my argu- my argument will be that she's really conveying to the other line and that Stonecrest actually got the title to this sliver and that's how I got the deed in the quitclaim deed. However, if the Court were to decide that she didn't actually convey it, the title would remain with Jennifer Butts, and I would have to the title from Jennifer Butts through the quitclaim deed from Jennifer Butts.

THE COURT: For Young Parcel 3?

MR. HOLDER: For Young Parcel 3.

THE COURT: Mr. Pembroke?

MR. PEMBROKE: Respectfully, Your Honor, I still don't see it. But…

THE COURT: Defendant's Twenty-three will be admitted.

(Defendant Justin Holder Exhibit No. 23 Admitted Into Evidence)

THE COURT: Justin Holder Exhibit Twenty-four, deed of August 1984 from Samuel Strite, Guardian of Jennifer Butts.

(Defendant Justin Holder Exhibit No. 24 Marked for Identification)

MR. PEMBROKE: How many more do you have?

MR. HOLDER: Uh, just those four. And then I had some last wills and testament. That's it.

THE COURT: Last wills and testament?

MR. HOLDER: Do - - do you want like the property changes hands by will? Do you - - would you want that in the chain? I - - I have them certified.

THE COURT: I - - I would think the deeds themselves are sufficient.

MR. HOLDER: Okay. I…

THE COURT: Okay. He can stay out until I'm ready. Matt Hull is here, but I'm going to have him remain in the hallway until we're ready. Number Twenty-four, that's another one in the chain?

MR. HOLDER: Yes, Your Honor.

THE COURT: Number Twenty-four will be admitted.

(Defendant Justin Holder Exhibit No. 24 Admitted Into Evidence)

MR. PEMBROKE: Your Honor, for the record…

THE COURT: Strite on behalf of Butts.

MR. HOLDER: As the guardian, I believe.

THE COURT: To Dorsey, I think, Leonard Dorsey. Yes, sir?

MR. PEMBROKE: I will just note my objection for the record.

THE COURT: Yes.

MR. PEMBROKE: Same objection.
THE COURT: Again, these are…
THE CLERK: Twenty-four admitted?
THE COURT: Twenty-four is admitted. These are certified documents from our Land Records. It will be admitted as being authentic and genuine. Whether - - I will give them the weight that they are due based upon my deliberation.
MR. HOLDER: I understand.
THE COURT: Defendant Justin Holder Exhibit Number Twenty-five, deed of June 1996 from Jennifer Butts to Thomas Davis, Liber 1289, folio 415.
(Defendant Justin Holder Exhibit No. 25 Marked for Identification)
THE COURT: Same objection, Mr. Pembroke?
MR. PEMBROKE: Yes, sir.
THE COURT: Very well. Twenty-five is admitted.
(Defendant Justin Holder Exhibit No. 25 Admitted Into Evidence)
THE COURT: Defendant Justin Holder Exhibit Number Twenty-six, deed September 1996 from Thomas Davis to Nancy Shatto, S-H-A-T-T-O, Liber 1293, folio 1061. Mr. Pembroke?
MR. PEMBROKE: Same objection, Your Honor.
THE COURT: Number Twenty-six is admitted.

(Defendant Justin Holder Exhibit No. 26
Marked for Identification &
Admitted Into Evidence)

THE COURT: Defendant Justin Holder Exhibit Twenty-seven, deed of August 1931 from Charles Pry…

MR. HOLDER: To Louise Staubs.

THE COURT: …to Louise Staubs, S-T-A-U-B-S.

MR. HOLDER: Yes.

THE COURT: Land Record 189, folio 196. What's this document?

(Defendant Justin Holder Exhibit No. 27
Marked for Identification)

MR. HOLDER: The title chain prior to Dorsey and the Butts' chain. So this is the Pry property that was Stonecrest. It was the Pry farm in Keedysville.

THE COURT: Mr. Pembroke?

MR. PEMBROKE: I'm sorry, did he say that's part of the Stonecrest?

THE COURT: He thinks it…

MR. HOLDER: Pry.

THE COURT: …was the Stonecrest property known as the Pry farm.

MR. PEMBROKE: I would object.

THE COURT: Is Mr. Nagle going to be testifying?

MR. HOLDER: Yes. Yes, he…

THE COURT: As to this chain?

MR. HOLDER: Yeah, he has the chain.

THE COURT: Okay. How many more do we have?

MR. HOLDER: Just, uh, how many do you got, Mr. Clerk?

THE COURT: What else do you have in your hand?

MR. HOLDER: Just one. Uh, reserve - - reserve that…

THE COURT: Why don't you give that to - - what is that one? Why don't we have it premarked? Go ahead. You'll be number at number Thirty-one.

MR. HOLDER: And that - - that's all. I apologize for the volume.

THE COURT: Okay. I think on these remaining, they're getting pretty old. Okay? I think I'd like to have Mr. Nagle indicate that these are something in the chain of title that he reviewed.

MR. HOLDER: That…

THE COURT: Is that okay?

MR. HOLDER: Yeah, I think that's fine.

THE COURT: So number Twenty-seven, Twenty-eight, Twenty-nine, Thirty and Thirty-one, I think I need Mr. Nagle to give me some foundation as to…

(Defendant Justin Holder Exhibit Nos. 28, 29, 30 & 31 Marked for Identification)

MR. HOLDER: Yeah, let's - - can we keep them to the side now that they're marked.

THE COURT: Yeah, they're right here.

MR. HOLDER: And we can just talk to…

THE COURT: They'll be right there.

MR. HOLDER: …Mr. Nagle as soon as…

THE COURT: Yeah.

MR. HOLDER: Okay, that's - - that's everything.

THE COURT: That's it?

MR. HOLDER: Yeah. I'd call…

THE COURT: Okay, Mr. Hull is here. Are we ready for Mr. Hull?

MR. HOLDER: Yes.

THE COURT: Okay. Let's have Matt Hull please.

TESTIMONY OF MATTHEW CLAY HULL

MATTHEW CLAY HULL, a witness, produced on call by the Defendant Justin Holder, first having been duly sworn according to law, was examined and testified as follows:

THE COURT: Sir, can you give me your full name?

A: Matthew Clay Hull.

THE COURT: And what is your business address?

A: 61 North Main Street, Keedysville, Maryland.

THE COURT: Okay. What do you do for the Town of Kee- are you employed by the Town of Keedysville?

A: I'm - - I'm a Council Mem- Member.

THE COURT: You're a Council Member?

A: Yes, sir.

THE COURT: Okay. Sorry to make you come here on short notice. Okay?

A: Well I - - I apologize for my attire. But…

THE COURT: No, no, no. I understand that you had other - - other business to attend to. It's fine. Okay? All right. You're going to be asked some questions. Just be sure the question is finished before you start answering. Okay?

A: Okay.

THE COURT: Okay. Go ahead, Mr. Holder.

DIRECT EXAMINATION

By Mr. Holder:

Q: Mr. Hull, thank you very much for your time today. How long have you been, I guess, employed with the Keedysville government or donating your time to the Keedysville government?

THE COURT: Make sure you keep your voice up, Mr. Holder.

Q: Okay.

A: Uh, I guess I got started, uh, in town stuff in probably '97, '98, in one form or another ever since then, I guess.

Q: Okay. And you've been Mayor at one point?

A: I was. Council Member then went to Assistant Mayor. Then when the former Mayor passed away, took over

as Mayor. Uh, was on the Planning Commission before any of it. Been the ex officio member of the Planning Commission for a good many years. I took a two-year sabbatical on - - on those town duties and then came back on council.

Q: And did you see the subpoena there was a special message in the subpoena that kind of described what you were going to be testifying…

A: Yeah, the Town Council provided me with a copy.

Q: Okay. And when you were - - during - - we're really focused on just the Stonecrest subdivision plat here at this - - this instance. So were you on the Planning and Zoning Commission when this plat was approved?

A: I would have been the ex officio member of the Commission, I believe.

Q: And were you the Mayor or the Vice Mayor when this…

A: I believe I was the Assistant, excuse me, Assistant Mayor at the time.

Q: Okay. Did you guys approve any ordinances that you recall in conjunction with this plat such as an adequate public facilities ordinance?

A: Uh, those were approved after the subdivision was approved.

Q: After the subdivision was approved? And when - - when approving a plat in a subdivision, does anybody in the - - can you explain the process of that?

A: The developer would usually come before the Planning Commission with a - - a concept, uh, and a number of lots that they would like to develop. And basically, uh, some back and forth. Uh, it takes a couple of years basically. Uh, they do the engineering, uh, present their - - their plan. Planning Commission will take it, look it over, forward it to the County, uh, for their blessings as well. And then it comes back. Uh, the Mayor and Council approves it. And the last signature is the Chairman of the Planning Commission.

Q: And during that process, does the Town ever review title work?

A: No.

Q: Does the Town rely solely on the engineers' opinions when approving a plat?

A: Uh, no, because there would be the concept of if it suits the Town, which is the reason for the Planning Commission. If the - - if the - - it would fit into the Town's overall…

Q: I'm - - I'm gonna stop you a minute. You might be getting into what is the Town's deliberative process. Maybe…

A: Do you have a…

Q: And I don't want to know about the…

THE COURT: It's okay.

Q: …Town's deliberative…

THE COURT: I - - I think your - - your question was does the Town only consider the engineers' statements on that plat? And I think his answer is, "No, they think of more things than just the plat."

Q: And do - - do you think of other properties adjacent to the plat and their access to utilities and easements and access to their property, schools, fire hydrants?

A: Uh, it - - it has to be an over- an overview. So, yes, we would look to see that there's able to get water and - - and other utilities to that area.

Q: Are you familiar with the properties of Deena Holder and Uncle Eddies? And I'm gonna look at Plaintiff's Exhibit Ten. This - - this is purportedly a tax map of Keedysville.

A: Mm-hm.

Q: Are you familiar with tax maps?

A: Yeah.

Q: And I believe been identified as Parcel 127, 412 and 414, can - - are - - are you familiar with - - with those parcels?

A: Yes.

Q: Okay. And are you familiar that this is - - this - - this line going horizontally from the north or northwest area of the plat to the southeastern area of the plat as being an abandoned railroad corridor?

MR. PEMBROKE: Objection, Your Honor.

THE COURT: I think he's just asking him to identify.

MR. PEMBROKE: Well…

THE COURT: By calling it an abandoned railroad, that's been an issue in the case. Let's not try to add that in.

MR. PEMBROKE: Well, Your Honor, and in addition to that, I would have to raise the issue of relevancy. My - - my understanding is that the parties are claiming their various rights by deed and - - and what have you over a certain period of time going back in a chain of - - chains of title back into the 1870s. I don't understand what Keedysville and the development of Stonecrest and access with respect to Stonecrest has to do with the issues that the Court has to decide in this case.

THE COURT: I'm going to give Mr. Holder a little bit of leeway. I think the question you're being asked is looking at that exhibit, which is a tax map, can - - can you orient yourself to where Stonecrest development is?

A: I - - I can.

THE COURT: Do you see it?

Q: Okay. Would Stonecrest be the one that says, "P288," and has a multitude of lots, 1 through 16?

A: Yes.

Q: Okay. And I know we have to make it on the record. That's why I'm asking all these - - I'm not trying to be - - and the Deena Holder and Uncle Eddies' properties are to the north of this Parcel 288 generally?

A: Yes.

Q: And they're surrounded by the Little Antietam Creek?

A: Yes.

Q: And would their only access to get utilities, water and sewer to the properties be through some place on this Plat 8292? Is there any other location you know of in town that they could get utilities from?

MR. PEMBROKE: Objection, Your Honor.

THE COURT: Yeah, Mr. Holder, what - - what is the relevance?

Q: Well he said - - and he looks at when approving a plat, one of the things they look at is whether the adjoining properties, the whole plan, has an ability to access and get services to the properties.

THE COURT: I - - I took it to mean they consider whether the subdivision can get utilities.

Q: Could - - could you clarify that for the Court? Is it just the subdivision or is it everybody?

A: I mean the - - the subdivision was what was in question at the time. Uh, so, yes, we looked at it and that came in off of - - those utilities came in off of Dogstreet.

Q: Okay.

THE COURT: The objection is sustained then.

Q: Okay. Has the Town ever had any conversations with Dan Ryan Builders concerning fencing and stormwater management and obstructions to stormwater management in Stonecrest that you're aware of?

A: Yes. Uh, it's actually pretty normal with developments. There's always things that slip through the cracks that you have to request that they get taken care of.

Q: Just hand you a document. Are you familiar with that particular document? I'll get it marked, yeah.

THE COURT: Does Mr. Pembroke have a copy?

Q: Yes.

THE COURT: Just ask him if he's familiar with it. Sir, have you ever seen that before?

A: Uh, not that I recall.

THE COURT: Okay. Give it back to Mr. Holder. Mr. Holder, if you wish to have it marked, you may, but he's

indicated he does not recall ever seeing that document.

Q: (Unintelligible). Do you - - do you remember any conversations when you were in the process of developing Stonecrest about access easement to the properties at 127, Parcel 412, with anybody?

A: No. The only thing about utilities going in - - in the direction of 127, we were looking to someday make a loop for the water main that would go up Dogstreet in through the proposed development back out onto Antietam Drive so certain areas in town, not just the - - the Stonecrest development, could be isolated if there was a leak or a problem for as to impact less people.

Q: And was that - - was that work completed? Was it built out when the site work was done or when the houses…

A: No. It - - it was stubbed out. Uh, it - - it was the - - the water line was run through the Stonecrest development and then it was just stopped.

Q: Approximately, just to the - - was it at the edge of Stonecrest there on the west side? Is that…

A: If I recall, it - - it went down to Antietam Drive the - - the water line stub, we'll call it, uh, and - - and stopped in Antietam Drive or thereabouts.

Q: Okay. And that was in 2005 when Stonecrest was built?

A: Uh, when - - it was approved, and I forget when

they started their utility work. It - - it may have been then next year.

Q: Do you know if the County, uh, health inspector signed off on this?

MR. PEMBROKE: Objection.

THE COURT: Sustained.

Q: Okay. Did - - did the County have any involvement in approving this plat?

THE COURT: Plat 8292, which was…

A: Oh…

THE COURT: …the subdivision plat of Stonecrest.

Q: Plaintiff's Exhibit - - part of Plaintiff's Exhibit…

A: They would have, uh, reviewed it for stormwater management ponds and, uh, forestation. Uh, and I would guess the Water Quality…

MR. PEMBROKE: Objection.

A: …Department.

THE COURT: Sustained. You can't guess.

A: Okay.

Q: You can't - - yeah. Okay, so the Town didn't review any stormwater management, the Town didn't review any forest con- conservation in approving the plat?

A: We did not.

Q: Okay, thank you. That's all the questions I have.

I appreciate your time.

END DIRECT EXAMINATION

THE COURT: Mr. Pembroke, any cross-examination?

MR. PEMBROKE: No sir.

THE COURT: Just so I understand, Mr. Hull, I want to be clear. So you're telling me there is a water line in Antietam Drive?

A: There is.

THE COURT: Is there a sewer line in Antietam Drive?

A: I - - I can't say for certain right now. I - - I…

THE COURT: Okay.

A: I - - I - - it may be partial way back. But, uh, the County does the sewer. The Town does the water system. It's kind of two separate…

THE COURT: The Town does water, County does sewer?

A: Correct.

THE COURT: So looking at that tax plat map…

A: Mm-hm.

THE COURT: If the owner of Parcel 127 wanted to get sewer, that - - they go through the Town - - or the County to do that?

A: Correct.

THE COURT: And if they want water, they go through the town?

A: Correct.

THE COURT: And there's water in Antietam Drive?

A: It's - - it was just recently redone. The loop was completed and extended to - - to Plat 127.

THE COURT: Oh, wait a minute.

A: The…

THE COURT: Hang on.

A: Okay.

THE COURT: When the Town built Stone- not the Town didn't build Stonecrest, but when Stonecrest got built…

A: Mm-hm.

THE COURT: My understanding of your testimony is the Town wanted to make a water loop so if there's ever a main break somewhere, they could shut things down and not affect other areas?

A: The entire town, correct, sit.

THE COURT: During that construction, water was run off of - - was it run off of Dogstreet?

A: For the - - the development, yes.

THE COURT: For the development. And did it extend outside of the Stonecrest development?

A: It extended and stopped.

THE COURT: In Antietam Street?

A: For future - - basically the Town couldn't demand that the, uh, the developer redo the water line. I think it was a 2-inch water line running up Antietam Drive and -

- and stopped. And we couldn't ask them to tie back into Main Street down Antietam Drive with an 8-inch main or anything. That would be out of their purview. But we wanted to be able to redo the - - the 50-year-old…

THE COURT: Government - - government could have demanded it, but I understand. I know - - I understand what you said. "You want your plat approved, you put in the pipe." I understand.

A: You stub it out to the end and…

THE COURT: Okay. But right now, are you saying that water has been extended to Parcel 127?

A: It has.

THE COURT: It's stubbed to 127?

A: It is.

THE COURT: The Holder properties?

A: It is.

THE COURT: And the Uncle Eddies' properties?

A: It is.

THE COURT: And to get water, what do they got to do? Pay a tap fee?

A: Yes, sir.

THE COURT: How much is that tap fee?

A: I believe it's $10,000 per tap.

THE COURT: Does each house have to pay a separate tap fee or…

A: Yes, sir.

THE COURT: Are you familiar with the sewer lines in this area?

A: Not - - I mean I - - I have a general idea where they run.

THE COURT: Does Stonecrest development have sewer?

A: It does.

THE COURT: Do you know what pump station that runs to? If you know.

A: Sharp- Sharpsburg.

THE COURT: Gravity or force?

A: Uh, force. There's a - - a pumping station at the - - the south end of Keedysville. And then I believe it…

THE COURT: Okay.

A: It - - it's, uh, everything in Keedysville's a forced main. All houses have grinder pumps and it - - it pumps it through a 2-inch line.

THE COURT: Is there sewer down the center of Main Street?

A: Yes.

THE COURT: Is there sewer inside Antietam Drive?

A: I can't say for certain. I - - I don't really know. And I'm not sure where…

THE COURT: Okay.

A: …some of those houses feed to.

THE COURT: On - - on that tax map, to the right of Main Street, there's another road. And I - - I always forget the name of it. It starts with a, "M."

Q: Mount Vernon Lane.

THE COURT: Mount Vernon Lane. Do you know where Mount Vernon Lane is?

A: Yes, sir.

THE COURT: Does Mount Vernon Lane have sewer in - - underneath it?

A: Yes. I - - I believe the sewer comes out Mount - - Mount Vernon Lane down to Dogstreet.

THE COURT: Mm-hm.

A: Uh, so I would - - I would be assuming. But I - - there - - there may not be.

THE COURT: But you - - you think there is sewer under Mount Vernon Lane?

A: Yes, because there's houses that back up to…

THE COURT: Right.

A: …Stonecrest. That before Stonecrest was there, they had to be serviced so.

THE COURT: Right. If you're - - if you're driving generally north on Mount Vernon Lane on this tax map, and I make a right-hand turn on Antietam Drive, it looks like on the tax map, there's five lots on the right side of Antietam if I'm driving back…

A: Mm-hm.

THE COURT: …to the stormwater management pond of Stonecrest.

A: Yes, sir.

THE COURT: Are those houses on sewer?

A: I - - I would say yes. But that - - I'm not positive.

THE COURT: Is their - - is their sewer line in Antietam Drive? Or does their sewer go out to Mount Vernon?

A: That…

THE COURT: Or don't you know?

A: I'm not sure. I don't - - I can't say for sure.

THE COURT: Okay. Thank you.

A: Are you done with me then?

THE COURT: Is he excused?

MR. PEMBROKE: I haven't questioned him.

THE COURT: Go ahead. Okay, I'm sorry. Counsel, do you have any questions for Mr. Hull based on the questions that I asked?

MR. HOLDER: Yeah, I…

THE COURT: I'm going to let - - let Mr. Pembroke go first.

MR. PEMBROKE: I - - just several.

THE COURT: Okay, go ahead.

CROSS-EXAMINATION

By Mr. Pembroke:

Q: Have the owners of 25 and 28 Antietam Drive paid the tap fee for the hook-up?

A: Is that the - - the Holder property?

Q: Yes, sir.

A: Uh, to my knowledge, they have not.

Q: And is An- is Antietam Drive a public road?

A: It is.

Q: Thank you. Those are the only questions I have.

END CROSS-EXAMINATION

THE COURT: Mr. Holder, do you have questions for Mr. Hull.

MR. HOLDER: Yeah.

THE COURT: Based on what I had asked.

MR. HOLDER: Yeah, just…

RE-DIRECT EXAMINATION

By Mr. Holder:

Q: Mr. - - Mr. Hull, are you - - are you aware that the 2010 Keedysville Comprehensive Plan reports that there are no septics in town?

A: That they're not - - uh, I mean there's not supposed to be. But that doesn't mean that there are not.

Q: If the sewer was directly discharging into the Little Antietam Creek, would you still consider that to be

a septic?

A: I - - I would have to, I guess.

Q: Are you allowed to hook up to a water system in Keedysville without hooking up to the sewer system? Is there - - is there a waiver to that sewer requirement?

A: I - - I'm not aware of any waivers.

Q: So you wouldn't be able to hook up to the water if you didn't have sewer. Is that accurate?

A: No. I believe what it is, is new construction has to hook up to the sewer. If you touch something, then you need to hook up to the sewer. If - - if there was - - there - - there's not - - everybody's supposed to be hooked up, but that doesn't mean that they are. There's some - - a couple of wells still in existence in town. So I would be at a far stretch to say there's absolutely no septics in town. There - - there's many things that the Town's not aware of.

Q: Are you aware of any representations the Town made to Deena Holder or Uncle Eddies Brokedown Palace that they could not have any water until they hooked up to the sewer and the water system?

A: Uh, repeat it please.

Q: I said are you aware of any representations that the Town or its agents made to Uncle Eddies or Deena Holder that they could not hook up to the water system

until they hooked up to the sewer system?

A: I'm not aware of such.

Q: And at one time was there an offer from the Town to place a sewer line in the same trench as the water line you ran?

A: There was great effort to - - to make that all happen.

Q: And - - and the Town's position is they didn't make that happen because I didn't sign an agreement to acquire all the easements with the County?

A: No. To my understanding, you didn't pay the - - you refused to pay the inspection fee, uh, was what I was led to believe.

Q: Okay, so you've never seen an email from Barry Levey stating Mark Bradshaw continued to send inspection fees. In fact, you were on that email chain?

A: I saw one or two that, uh, from you to Mark Bradshaw that the Town would be the administrator or the go-between or whatever for the inspections, uh, which the Town could not be because we weren't the developer. But to my understanding, three times you turned the check in with three times not signing the agreement.

Q: Okay, thank you. Thank you for that. What - - and by the agreement, you mean the developer agreement?

A: Between the developer and the County for

inspection services on a proposed sewer line.

Q: Okay, and was…

THE COURT: In - - in that agreement, who was the - - the developer?

A: The, uh, the Holder properties.

THE COURT: Okay.

A: …would have been the developer.

THE COURT: But not - - not the Stonecrest developer, the Holder property in general? Okay.

Q: It was - - are you aware that the developer agreement was titled to Justin Holder solely?

A: I - - that was not between the Town and the - - and the Justin Holder property. It been between the County. Uh, I don't know what the issue was between the County and the property. I just know it wasn't happening.

Q: Are - - are you aware of any difficulty the Holder properties were having getting easements, uh, for utilities and access to the property over the - - I would say three-year period this has been…

A: Absolutely. There was a railroad in the middle of the - - railroads were the original right of way holders in the United States. And they're - - they don't like their - - their property being dug up. So it was a tremendous effort to - - to get that approved.

Q: Did the railroad…

THE COURT: Did…

Q: …cross Main Street as well?

A: Excuse me?

Q: Did the railroad…

MR. PEMBROKE: Objection.

THE COURT: Hang - - sustained. May I jump in…

Q: Yeah…

THE COURT: …for one question?

Q: Yes.

THE COURT: Did the Town go over the railroad property to stub out the water at the Parcel 127?

A: Eventually, yes, we did.

THE COURT: So there's water line down Antietam across the railroad property onto 127?

A: Yes, sir.

THE COURT: Stubbed and ready to go?

A: Yes, sir.

THE COURT: And just so that I understand your questions, the Town and the County were willing to also run sewer at the same time so long as the Holder parcels paid the fees and signed an agreement as to water and sewer going in the ground?

A: Yes, sir. The - - Barry Levey, who has put in great - - great effort to get a - - a same trench design because the right of way of Mount - - Antietam Drive is

not wide enough to actually sustain the separation between a water and a sanitary sewer line.

THE COURT: Do they go vertically or do they have to be horizontal? Out of my own curiosity.

A: Normal- normally. Uh, and a whole lot of effort between - - by Mr. Levey, engineers, got it accepted, by all parties be that they could be in the same trench, uh, sanitary sewer below the water. And, uh, but it was approved.

THE COURT: Okay. So you put the sewer underneath the water?

A: Yeah.

THE COURT: Makes sense.

A: And - - and running a sleeve and it's…

THE COURT: Okay.

A: It was…

THE COURT: I'm sorry to jump in there, Mr. Holder.

Q: I want you…

THE COURT: Do you have anymore questions for Mr. Hull?

Q: Uh, yeah. You said Antietam Drive was a public road. Do - - do you know how far the Town has decided it's a public road and been maintaining that public road?

A: I don't know that we've decided. We've - - we've plowed back to the railroad line as far as I'm aware.

Q: To - - to the yellow house?

A: To the - - wherever the truck could turn around. So would - - would be as far as they plowed.

Q: Has that been for the entire time that you were in Town Hall have they always done that?

A: I - - they plowed back there. I don't know exactly how far. I - - I never really went to look and no complaints and so it wasn't a concern.

Q: And in approving a subdivision plat without public facilities, is there a certain minimum with the public roads that need to be provided?

A: On - - on a new one or an old one?

Q: Uh, on a new plat…

MR. PEMBROKE: Objection.

Q: …or an old - - an existing road.

MR. PEMBROKE: I think this exceeds what the Court…

THE COURT: Sustained. I - - I don't see how it's relevant. I think we're exceeding…

Q: Okay.

THE COURT: …the reason that he was called as a witness.

Q: Okay. Then no further questions, Your Honor.

END RE-DIRECT EXAMINATION

THE COURT: Okay.

MR. PEMBROKE: Your Honor, I have just one follow-up.

THE COURT: All right and then we're finished.

RE-CROSS-EXAMINATION

By Mr. Pembroke:

Q: In your - - in your testimony, I believe you made a reference, you said to the Justin Holder properties. Are you - - are you aware that Mr. Holder owns any property on Antietam Drive?

A: I - - I - - I used - - I probably misspoke. It's whatever it's titled as. Uh, I just, you know, the name is all inclusive, I guess, in my mind. So I apologize.

Q: Thank you for clearing that up.

END RE-CROSS-EXAMINATION

THE COURT: All right, Mr. Hull, thank you very much, sir.

A: Thank you.

THE COURT: You may step down and you're excused. Mr. Hull…

A: Sir?

THE COURT: Thank you for making it in today. Appreciate it.

A: Thank you for your…

THE COURT: Mr. Kuczynski, thank you for your cooperation, sir.

MR. KUCZYNSKI: Thank you, Your Honor.

MR. HOLDER: Thank you. Thank you, Mr. Kuczynski.

Thank you, Mr. Hull.

END TESTIMONY OF MATTHEW CLAY HULL

THE COURT: Okay, we are at 11:20. Is the next witness Mr. Nagle?

MR. HOLDER: At 1:00.

THE COURT: Okay. Do you have any other witnesses other than Mr. Nagle?

MR. HOLDER: No, Your Honor, I do not.

THE COURT: Okay. Good because I forgot to keep time today. I would propose that we break now unless there's anything else we need to discuss that we break now until 1:00 for Mr. Nagle.

MR. HOLDER: We could handle the thing he wants the LLC…

MR. KINE: I - - I believe, Your Honor, I can answer or proffer…

THE COURT: Excellent.

MR. KLINE: …to the Court the Uncle Eddies' question you posed earlier this morning.

THE COURT: Hang on a second. Okay.

MR. KLINE: First of all, by way of background…

THE COURT: Yeah.

MR. KLINE: Obviously, I didn't have - - I used my phone for a lot of the searching and spoke with Mr. Holder to accomplish what the Court asked information for. Uncle

Eddies is a New Mexico corporation in good standing.

THE COURT: Corporation or LLC?

MR. KLINE: LLC, I'm sorry.

THE COURT: Okay.

MR. KLINE: Excuse me, LLC, formed on August 23, 2017.

THE COURT: Okay.

MR. KLINE: As I said, it's in good standing. It is not registered - - not registered in Maryland as a foreign corporation. You didn't ask that question. I just looked it up anyway.

THE COURT: Okay.

MR. KLINE: At the time of forming, Deena Holder was the sole member. So I am told. I don't have any documentation to support that at all.

THE COURT: Okay.

MR. KLINE: What I was able to determine and confirm is that Koolbus, and that is spelled, K-O-O-L-B-U-S, all one word.

THE COURT: Yeah.

MR. KLINE: LLC, is now the member - - is also a New Mexico corporation formed March 9, 2018, and has become the sole member of Uncle Eddies Brokedown Palace. The members of Koolbus, LLC, while represented by Mr. Holder, are his two children. In talking to him, my understanding is the appropriate paperwork has not been filed. And so

it is for all intents and purposes memberless.

THE COURT: Okay.

MR. KLINE: Apparently, and - - and I'm not licensed in New Mexico, and I don't know how you incorporate in New Mexico, but apparently they - - you go online and you register, and a company, as I'm sure the Court's well aware, will incorporate an LLC company, Subchapter S, what have you.

THE COURT: That's it.

MR. KLINE: And then sends the paperwork out for completion for return.

THE COURT: Okay.

MR. KLINE: That paperwork for return has not been returned. So there are no members. While it is the intent of Mr. Holder to have his two children, they are both minors, and I believe the Court has their names, but I can give you their names again.

THE COURT: No, it's okay. I have it in my notes.

MR. KLINE: Mr. Holder represented yesterday that Sharpsburg Property Management was the manager of Uncle Eddies. So and I don't know how far afield the Court wanted, but I was trying to give a full picture. Uncle Eddies is managed by a, if you like, a property management company, if you will.

THE COURT: But from a corporate perspective, LLCs are

either member-managed or managing member. But Sharpsburg - - give me the name of it again. Sharpsburg…

MR. KLINE: So I understand the Court's question, and I understand the delineation. But I was…

THE COURT: Sharpsburg, what is it? Sharpsburg Property Management?

MR. KLINE: Sharpsburg Property Management.

THE COURT: Yeah. Is a what, an LLC?

MR. KLINE: Is a trade name of…

THE COURT: Okay.

MR. KLINE: …Sharpsburg Auto, LLC.

MR. HOLDER: Sharpsburg Auto Lift, LLC.

MR. KLINE: Auto Lift, L-I-F-T, LLC, a Maryland limited liability company. They…

THE COURT: Okay, so Sharpsburg Auto Lift trades as Sharpsburg Property Management?

MR. KLINE: Yes, sir.

MR. HOLDER: It also trades as Antietam Automotive and Diesel. I mean…

MR. KLINE: That…

THE COURT: It's okay. Okay.

MR. KLINE: But Mr. Holder had represented to the Court yesterday or mentioned Sharpsburg Property Management as the manager of Uncle Eddies, and he meant that in a property management mode, not a manager of the

LLC.

THE COURT: Not an owner manager.

MR. KLINE: Correct.

THE COURT: Okay. And Sharpsburg Auto Lift, LLC, which trades as these other two.

MR. HOLDER: Correct.

MR. KLINE: Yes.

THE COURT: Who are the members of that?

MR. HOLDER: I am the member.

MR. KLINE: Just Justin Holder.

THE COURT: Justin Holder is the member, sole member?

MR. HOLDER: Sole member, yes - - yes, Your Honor.

MR. KLINE: The question regarding the trust…

THE COURT: Yeah.

MR. KLINE: …which the Court asked…

THE COURT: I - - I heard the words, "Land trust," yesterday, and it confused me.

MR. KLINE: Under- understood. Unfortunately, Mr. Holder is - - has the intention of doing a trust. There is no land trust.

THE COURT: Okay.

MR. KLINE: So there is no EI- there's no Federal ID number. There's no filing for the land trust. There's no family trust revocable or irrevocable that would require further filings.

THE COURT: Okay.

MR. KLINE: It's his intention, in full disclosure, to - - and if testimony were to be taken would be to - - when eventually the children become of age given the fact they're both minors, he would in place - - place the Uncle Eddies' interest, whatever that happens to be or the Court decides or whatever, you know, in his trust or as a guardian or custodian for the minor children. But none of that has been reduced to writing.

THE COURT: Right. So ultimately, maybe a trust where mom and dad are the trustees, the kids are the beneficiaries.

MR. KLINE: Correct. But, again, I don't want to…

THE COURT: Yeah.

MR. KLINE: …lead the Court to believe that it's reduced to a writing, and I can produce a piece of paper.

THE COURT: Okay.

MR. KLINE: Or they can, that anyone can.

THE COURT: Right. So currently, the party in this action is Uncle Eddies. It's owned by Koolbus, LLC, as its sole member. Koolbus, LLC, has been filed in 2018, in New Mexico, but it has no actual members.

MR. KLINE: It has not filed the paperwork to designate a member or members.

THE COURT: Right. Who filed Koolbus, LLC, in New

Mexico? Who hit, "Send," on that…

MR. KLINE: I believe it's Mr. Holder.

THE COURT: Okay.

MR. HOLDER: That's correct.

MR. KLINE: If I'm wrong, kick me.

MR. HOLDER: I will.

THE COURT: Well typically when you start a corporation before the actual, you know, official ownership is created, it - - it is - - the person responsible is the person who sought to organize the corporation. Right? As attorneys, we set up an LLC for somebody or - - or a corporation. Whoever signs that Article of Incorporation is the company until there's an action by the shareholders to - - there's an informal action to create shares and the shareholders and elect the board. Right? So…

MR. KLINE: I - - I will - - I would disagree…

THE COURT: Okay.

MR. KLINE: …politely.

THE COURT: You tell me.

MR. KLINE: In - - in that - - and I'm happy - - you can have a - - in Maryland, again, I can't address New Mexico, but in Maryland, you can have an incorporator as - - like attorneys are the incorporators…

THE COURT: Right.

MR. KLINE: …but they would then list whoever the principals are…

THE COURT: Okay.

MR. KLINE: …through different Maryland forms indicating who's responsible for tax purposes and whatever. So I think that Mr. Pembroke and I could actually, and I don't mean to drag him into this because, you know, but as an attorney, I could file as the incorporator, but I would not be the member or the owner…

MR. PEMBROKE: That's correct.

MR. KLINE: …whether it was a Subchapter S, C or LLC. Or outside of a number of companies, Your Honor.

THE COURT: Okay. Is Koolbus, LLC, authorized to do business in the State of Maryland?

MR. KLINE: No. It has - - it has not filed the appropriate paperwork to be a registered foreign corporation or LLC in Maryland.

THE COURT: Okay.

MR. KLINE: It's in good standing. Koolbus, LLC, is in good standing. So it would be able to provide a certificate and then become a - - a registered foreign corporation in Maryland.

THE COURT: Okay.

MR. KLINE: There's - - or there's no impediment for it to be. It is not though - - not done the paperwork.

THE COURT: Thank you.

MR. KLINE: You're welcome.

THE COURT: Now I understand.

MR. KLINE: Yes, sir.

THE COURT: It is 11:30. We are expecting Mr. Nagle at 1:00. So why don't we break for lunch. Enjoy your lunches. We will see you at 1 o'clock.

(Whereupon upon this matter went into recess at 11:31 p. m.)

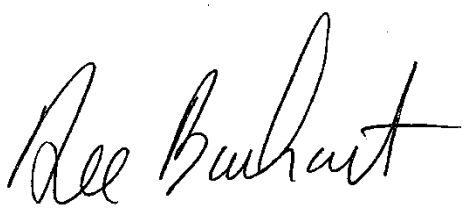
OoO

√ Digitally signed by Dee Barnhart

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of **Jeffrey Young versus Justin Holder, et al., Case No. C-21-CV-20-371,** in the Circuit Court for Washington County, on June 23, 2022, before the Honorable Andrew F. Wilkinson.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 110 constitute the official transcript of the proceedings. In witness whereof, I have affixed my signature this 7th day of September, 2022.



Dee Barnhart
Court Reporter

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JEFFREY YOUNG	*	
Plaintiff	*	
v.	*	**CASE NO. C-21-CV-20-371**
JUSTIN HOLDER, et al.	*	
Defendants	*	

TRANSCRIPT OF PROCEEDINGS
(MERITS HEARING)

(VOLUME III – DAY THREE – AFTERNOON SESSION)

Circuit Court
Hagerstown, MD
June 23, 2022

Before:

The Honorable Andrew F. Wilkinson

Appearances:

R. David Pembroke, Esquire, attorney for Plaintiff, Jeffrey Young; and

Justin Holder, Defendant, pro se; and

Brandy Peeples, Esquire, attorney for Defendant, Deena Holder; and

Robert Kline, Esquire, attorney for Defendant, Uncle Eddies Brokedown Palace

Transcribed from electronic recording by:

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P R O C E E D I N G S

(Whereupon this matter commenced at 1:05 p. m.)

THE COURT: Okay, we're back on the record, Jeffrey Young versus Justin Holder, et al., C-21-CV-20-371. We are still in the Defendants' case. Who is the next witness?

MR. HOLDER: Your Honor, Defendant Justin Holder calls expert George Nagle.

THE COURT: Very well. Is Mr. Nagel here?

MR. NAGEL: Yes, Your Honor.

THE COURT: Oh, come on up, Mr. Nagel.

TESTIMONY OF GEORGE NAGEL

GEORGE NAGEL, a witness, produced on call by the Defendant Justin Holder, first having been duly sworn according to law, was examined and testified as follows:

THE COURT: Sir, can you give me your name?

A: George Nagel.

THE COURT: And your business address?

A: 981 Mount Aetna Road, Hagerstown, Maryland, 21740.

THE COURT: And which company do you work for?

A: Fox and Associates, Incorporated.

THE COURT: Okay. And your general occupation?

A: Professional land surveyor.

THE COURT: Very well. Mr. Holder.

DIRECT EXAMINATION

By Mr. Holder:

Q: Good afternoon, Mr. Nagel. Thank you for coming. Would you mark Defendant's Exhibit Twenty-…

MR. CLERK: Thirty-two.

Q: Thirty-two? Do you recognize this document, Mr. Nagel?

A: I do.

Q: Is that your resume?

A: It is.

Q: Move to admit Exhibit Thirty-two.

THE COURT: Have you shown it to Mr. Pembroke?

MR. PEMBROKE: Your Honor, I don't object, but we did stipulate.

THE COURT: Very well. Which number is this?

Q: Thirty-two.

THE COURT: Okay, Thirty-two will be admitted.

(Defendant Justin Holder Exhibit No. 32
Marked for Identification &
Admitted Into Evidence)

THE COURT: Mr. Nagel is one of the experts that was stipulated to? Yes?

Q: Yeah, that's why I just…

THE COURT: Okay. He was one of the experts?

Q: Yes.

THE COURT: And you're offering him as an expert in

land surveying?

Q: Yes, Your Honor.

THE COURT: Okay. Anything else?

Q: Land surveying, I think is what is on his resume.

THE COURT: Okay. Any objection to that, Mr. Pembroke?

MR. PEMBROKE: I didn't hear it.

THE COURT: Land surveying.

Q: Just land surveying.

MR. PEMBROKE: No, there's no objection.

THE COURT: Okay. Mr. Nagel will be admitted as an expert in this court in the field of land surveying.

Q: Okay, thank you, Your Honor.

THE COURT: So you can go ahead. We don't need to - - we can dispense with any other questions about his qualifications unless you want to ask them.

Q: No. I…

THE COURT: Okay, go ahead.

Q: If you mark this as Defense Exhibit Justin Holder Thirty-three please.

(Defendant Justin Holder Exhibit No. 33 Marked for Identification)

Q: Mr. Nagle, have you seen that prior?

A: Yes, I have.

Q: Can you identify it for the record please?

A: Yes. It's a boundary survey that we prepared for Mr. Holder.

Q: Move to - - move to bring Justin Holder Exhibit Thirty-three into evidence.

THE COURT: Mr. Pembroke?

MR. PEMBROKE: No objection.

THE COURT: Justin Holder Thirty-three is admitted as the boundary survey completed by Fox and Associates.

A: Yes.

(Defendant Justin Holder Exhibit No. 33 Admitted Into Evidence)

THE COURT: What's the general date that that was completed? Do you know, Mr…

Q: August 31st - - August 30th, 2021.

THE COURT: Okay. August of 2021?

Q: Yes.

THE COURT: Very well.

Q: I have some various work product. Would you like me to break it up? Basically the title report and - - and the two deeds associated…

THE COURT: His, Mr. Nagle's work product?

Q: Yes.

THE COURT: Why don't you show that to Mr. Pembroke first?

Q: Okay. Would you mark Defendant Justin Holder

Exhibit Thirty-four?

(Defendant Justin Holder Exhibit No. 34 Marked for Identification)

Q: Mr. Nagle, could you examine that and see if it's…

MR. KLINE: You got to keep your voice up.

THE COURT: You got to keep your voice up, Mr. Holder.

Q: Could you examine document and see if it's a part of a tile abstract or title chain you looked at for the - - the Holder properties in relation to the eastern boundary?

MR. PEMBROKE: Objection.

THE COURT: Okay, hang on a second. When you stand there in the middle of the courtroom, you're about as far away from all of the microphones as you can be. So it might be a little easier if you stand back closer to a microphone.

Q: Okay.

THE COURT: So that we're sure that we have you on - - on the recording. Okay?

Q: Yes, Your Honor.

THE COURT: What is the objection, Mr. Pembroke?

MR. PEMBROKE: Your Honor, it seemed that Mr. Holder was the one doing the testifying and the identifying, not Mr. Nagel.

THE COURT: Understood. When you hand that to them,

just ask them, "Have you seen this document before? Can you tell me what it is?" Okay?

Q: Yes, Your Honor.

THE COURT: So hand the document. "I'm handing you Justin Holder Thirty-four. Have you seen that document before?" "Yes." "Do you - - tell me what it is." And the witness will tell you what it is. And that way you and I know what it is they're looking at. Then we can talk about admission. Okay?

Q: Yes, Your Honor.

THE COURT: That's how you do it.

Q: Yes, Your Honor.

THE COURT: Okay. Mr. Nagel, have you seen that document before that is marked for identification as Justin Holder Thirty-four?

A: Yes, I have.

THE COURT: Okay. What is it?

A: This is part of the research, part of the documents that we did research when we were doing - - we just uncovered and used when we were doing the research for the boundary survey for Mr. Holder's property.

THE COURT: When you did the boundary survey, which is Defendant's Thirty-three?

A: Correct.

THE COURT: Very well.

A: Yes.

Q: Move to admit Defendant Justin Holder's Exhibit Thirty-three.

MS. PEEPLES: Thirty-four.

MR. PEMBROKE: No objection.

THE COURT: Without objection. It's Thirty-four.

Q: I'm sorry.

THE COURT: It's okay.

(Defendant Justin Holder Exhibit No. 34 Admitted Into Evidence)

Q: Could I see those three exhibits please?

THE COURT: Yeah. There's four of them.

Q: Four?

THE COURT: Twenty-seven, Twenty-eight, Twenty-nine, Thirty, Thirty-one, actually five of them. Okay? Do you want to do them one at a time? Are you doing them through him?

Q: I was gonna do them…

THE COURT: Okay. Do it one at a time. Thirty-four is admitted.

Q: Mr. Nagel, can you look at…

THE COURT: Mr. Pembroke, so that you know, we're going back now to some previous documents that for which admission was sought, Twenty-seven through Thirty-one. My expectation is that they are old deeds. I'm not sure

whose line their in. I hope that you can through the witness tell me whose line they are in. Okay? So which one does he have in his hand?

Q: Uh…

A: Twenty-seven.

THE COURT: Twenty-seven. Have you seen that document before, sir?

A: Yes, I have.

THE COURT: What is it?

A: It's a deed from Louise Staubs to - - or, I'm sorry, from Charles Pry to Louise Staubs.

THE COURT: What's the date on that deed?

A: Uh, 7- August 17th, 1951. I'm sorry, 1931.

THE COURT: Okay. And in whose chain of title is that? Do you know?

A: I believe it includes multiple parcels here. I think this was part of Mr. Holder's property.

THE COURT: Okay. He's identified it. Do you wish to seek it admitted?

Q: Move to admit Twenty-seven.

THE COURT: You seek its admission, Mr. Pembroke?

MR. PEMBROKE: Your Honor, I'm going to object.

THE COURT: Okay.

MR. PEMBROKE: Two reasons, one, he said, "I believe it is."

THE COURT: Mm-hm.

MR. PEMBROKE: And, two, he said Mr. Holder's property. I believe the evidence up to this point is that Mr. Holder doesn't own any property.

THE COURT: Mr. Holder, can you clear that up with Mr. Nagel as to which property he believes it is to?

Q: Mr. Nagel, do you believe it was a predecessor to on Plaintiff's Exhibit Ten, Parcel 288…

A: Part of Stonecrest.

Q: Part, yes.

A: Yeah, the Stonecrest subdivision, yes.

THE COURT: Okay. So it's a predecessor of…

A: It - - it includes…

THE COURT: …Stonecrest, not a predecessor of Mr. Holder?

A: Uh, yes, I believe it - - it includes both parcels. So the Parcel 127 is also one of those parcels I, if I remember correctly, I would have to look at our chain of title again or our document that we had there.

THE COURT: Would it be helpful for you to look at your chain of title?

A: Yes, it would be.

THE COURT: Hand this to him.

Q: Sorry, I should have handed that to you.

A: It's okay.

THE COURT: Mr. Holder, I just want you to understand that the importance for this is when I go back and I look at my notes with the evidence next to my notes, and I begin thinking about this case during my deliberation, it's really important to me that I understand when I look at an exhibit what property it's about and in whose chain of title it is. Okay? That's why I'm - - we're slowing down here a little bit. Okay?

Q: Yeah, and I - - I was kind of in a rush.

THE COURT: It's okay. You're doing - - you're doing fine. Just let's take our time.

Q: I want to apologize.

THE COURT: I want to be sure that I understand. Okay?

Q: Yeah, I do too.

THE COURT: Does he have number Twenty-seven in front of him? Because we're still on Twenty-seven, right?

A: I do not.

THE COURT: Do you have that in front of you?

A: I do not.

THE COURT: I think it's on Mr. Pembroke's table.

Q: You mind if we get it back?

MR. PEMBROKE: Sure.

THE COURT: Okay. Have you had an opportunity to review your notes?

A: Yes.

THE COURT: Okay, now looking at what has been marked as Justin Holder Number Twenty-seven, can you help me understand what that is?

A: I believe this was for the predecessor to the Stonecrest subdivision.

THE COURT: Very well. Do you wish to admit it now?

Q: Yes, please admit…

THE COURT: Any objection, Mr. Pembroke?

MR. PEMBROKE: Your Honor, he still says, "I believe."

THE COURT: Mr. Holder will have to deal with that in - - in his examination. Number Twenty-seven is admitted.

(Defendant Holder Exhibit No. 27
Admitted Into Evidence)

Q: I'm gonna go with Number Twenty-nine here. Can you look at that document?

A: Do you have two on there? Number Twenty-nine?

Q: Yes.

THE COURT: Yes, sir.

A: Yes, okay.

Q: Are you familiar with that deed?

A: Yes, I am.

Q: Okay, and if you look at the certification from the Clerk, is it possible they put the wrong Folio/liber on that deed?

A: Down here at the bottom…
Q: Yes.
A: …where it says, "NN197 through 199?"
Q: Yes.
A: I would agree, yes. I believe this is NN590 or 520, maybe.
Q: And did you include deed NN520 in your work product that - - that I - - that you have as…
A: It's 520. Yes, we did.
Q: Is that record that I handed you the same record that's in your work product?
A: It is, yes.
THE COURT: What is…
Q: What - - what relevance…
THE COURT: …NN520?
Q: …does deed NN520 have to this litigation?
THE COURT: Just, no, not - - what - - just ask him what is NN520?
Q: Okay. What is deed NN520?
A: It's a predecessor to the Stonecrest subdivision and other parcels in town, but it's a much larger parcel.
THE COURT: Okay.
Q: Move to admit Exhibit Twenty-nine.
THE COURT: Mr. Pembroke?
MR. PEMBROKE: Could I have the date please?

Q: September 10, 1832.
THE COURT: What is it? 1832?
Q: September 10, 1832.
THE COURT: Okay.
MR. PEMBROKE: I'm going to object, Your Honor.
THE COURT: Understand. Overruled. It will be admitted. I'll determine the weight to give it.
(Defendant Justin Holder Exhibit No. 29 Admitted Into Evidence)
Q: Do you recognize that?
THE COURT: What number did you just hand him?
Q: Number Thirty.
THE COURT: Okay. So the witness is looking at what has been marked as Justin Holder Number Thirty. Mr. Nagle, have you seen that document before?
A: Yes.
THE COURT: Is it one of the documents you looked at in your review of this case?
A: Yes, it was.
THE COURT: What is it?
A: It is the - - the deed immediately - - well I guess it's the deed right after NN520.
THE COURT: So it's the deed right after the 1832 deed?
A: That is correct.

THE COURT: For what parcel?
A: It also includes Stonecrest as well as…
THE COURT: Okay.
A: …Mr. - - Uncle Eddies Brokedown Palace.
THE COURT: Mr. Holder, do you wish to have…
Q: Yes, I move to…
THE COURT: …Number Thirty admitted?
Q: …admit Exhibit Thirty.
THE COURT: Mr. Pembroke?
MR. PEMBROKE: What's the date please?
Q: It's…
A: March 22nd, 1872.
MR. PEMBROKE: What is it?
Q: March 22nd, 1872.
THE COURT: It will be admitted.
MR. PEMBROKE: Admitted. I - - I have no objection.
THE COURT: Yeah, it is. It's admitted.
(Defendant Justin Holder Exhibit No. 30
Admitted Into Evidence)
Q: I'm going to do one last one here.
THE COURT: What number did you just hand him?
Q: It's Number Thirty-two.
A: Thirty-one.
Q: Thirty-one.
A: Thirty-one.

THE COURT: Ask him if he's seen it before.

Q: Have you seen that document before?

A: Yes.

Q: Could you tell the Court what - - what it is?

A: It's a predecessor to, which includes portions of Stonecrest and, I believe, it was Uncle Eddies Brokedown, uh, Palace.

THE COURT: What's the date?

A: The date on this one is March 15th. It's difficult to read. I don't know. I cannot read the date on it. It's too small.

THE COURT: Okay.

A: And too…

THE COURT: Is there a Liber/folio on it?

A: There is. It's LG - - IG621.

Q: Mr. Nagel, can you read the certification where the Clerk stamped it?

A: That's what I was…

Q: Oh, okay.

A: "Hereby certify and true," that's where I got the…

Q: Okay.

A: …the book - - the book number.

THE COURT: And is this a document that you reviewed in your work for this case?

A: Yes.

Q: Move to admit Defendant Justin Holder's Exhibit Thirty-one.

THE COURT: Thirty-one, Mr. Pembroke?

MR. PEMBROKE: No admission, uh, no admission. No objection.

THE COURT: It will be admitted. I believe it's Liber - - documented as G621 in the Land Records of Washington County.

(Defendant Justin Holder Exhibit No. 31 Admitted Into Evidence)

Q: Yes. Yes, Your Honor.

THE COURT: Yes, sir. Okay.

MR. CLERK: G621?

THE COURT: Yes sir.

Q: This - - this deed's so illegible. I'm just not going to attempt to…

THE COURT: Okay.

Q: So I'm just going to…

THE COURT: It's already marked?

Q: Yeah.

THE COURT: Okay. Which number was that?

A: Uh, that was Number Twenty-eight.

THE COURT: What was previously marked as Justin Holder Number Twenty-eight is not being sought for admission.

THE CLERK: You said Thirty-one was admitted, Your Honor?

THE COURT: Thirty-one is admitted.

THE CLERK: Thank you.

Q: Now we got the housekeeping done, Mr. Nagel…

THE COURT: There you go, go ahead.

Q: Is there a time that I came to you and asked you to examine title to a wagon road or locate a wagon road?

A: Yes.

Q: Okay. And, uh, what did you? Where did you look? Where did you start looking for a wagon road?

A: Well first we did the research that was - - that we could do for the boundary, which indicated that the wagon road was on the west side of the Washington County Railroad, which would be on the back portion of the Stonecrest subdivision.

Q: Hang on a second. I'm going to put Plaintiff's Exhibit Thirteen on the board. And if you can just particularly kind of - - and you can even come down and point for the Court if you - - if you like.

THE COURT: Plaintiff's Thirteen is Plat Number 8293. It has been admitted in this court, Mr. Nagel. So you're looking at something we've been looking at for three days now.

A: Okay.

THE COURT: Okay?

A: So we went out. We did some field re- research and some field recovery. And we determined that the - - the wagon road, at least the access easement portion that Mr. Holder had initially engaged us to do, ran across the back of this forest conservation easement, storm management area and Lots 9 and all the way up in a portion of 10.

Q: Did the wagon road metes and bounds description contain - - did it contain a metes and bounds description?

A: It did.

Q: Did it have any monuments?

A: It did call for a monument.

Q: Were you able to locate any monuments?

A: We were. We did. We located a stone, approximately in this area, and another stone just beyond the subdivision over here. The distance between the stones agreed pretty well considering the description the way it was written in the back that was in purchase. So they…

Q: And here's Plaintiff's…

THE COURT: So the record will reflect, he's indicating that there was one of the stones was down near the corner of Lots 9 and 10 on Plat 8293.

A: Correct.

Q: This is Plaintiff's Exhibit Number Eight. And are you familiar with Plaintiff's Exhibit Number Eight, folio 778 of deed of 434/776, Roy G. Reeder to Harry Wickline, 1966?

A: I am.

Q: Are you familiar with this plat that's attached to the deed?

A: Yes.

Q: Is one of the stones you found referenced as a monument on this plat?

A: I believe it is, yes. It's a planted stone right up here in the northeast corner of the property.

Q: Okay. And how - - what degree of certainty can you tell the Court that that's - - that's the stone that's on that plat that you located?

A: I would say with a pretty high degree of certainty. We located other monumentation on this property and adjacent properties. And when you plot up the deeds that call for those stones, they come to agree very closely with what we found in the field. One of the other monumentation we found here was this limestone post. We did find a pipe there but, well it wasn't a pipe, it was actually rebar and cap. So it was a much newer point. Apparently, the old point was gone. We found some stones on some other adjacent properties on the ends of the some

of the lines on the NN520. And when you place that over top of what we found in the field, the angles agree between the bearings and the distances agree within what you would expect for a description that was just written to the nearest degree and the nearest perch.

Q: Is - - is this planted stone here, and - - and I'll just say for the court, we've been calling it the BQT stone, is this BQT stone a monument at the end of the third line on deed NN520?

A: It is. It's also the monument, the terminus of that access easement.

Q: And is it - - well I'll get to that. Is that stone described in NN520 as being on the 57th line of the resurvey of Fellfoot Enlarged, recorded at Liber G, folio 621?

A: I would have to re-read the deed, but it does sound familiar.

Q: If you - - if you wanted to do that.

A: Okay.

THE COURT: You're going to have to get him that deed so he understands what he's looking at.

A: I have it right here, sorry.

THE COURT: Which…

A: It's part of Exhibit Thirty-four.

THE COURT: And Exhibit Thirty-four was what?

Q: That's Mr. Nagel's work product.

THE COURT: Okay. But which deed are we talking about?

Q: This is deed Liber NN520, September 10th, 1832, David Hess to Samuel Cost.

THE COURT: Exhibit Number Twenty-Nine for Justin Holder?

Q: Yes, Your Honor.

THE COURT: Okay, thank you.

Q: The reason I provided in his work product is the copy is much clearer in Mr. Nagel's work product of the Land Records.

A: It states that it's the end of the line of Fellfoot Enlarged, unless I'm missing something upfront here.

Q: I - - I could have been incorrect. I apologize. Is it…

A: It says, "Part of the aforesaid resurvey of Fellfoot Enlarged." Yeah, I think it just states that it's at the - - it's to a stone that's standing at the end of the line of Fellfoot Enlarged. It doesn't specify which line it was.

THE COURT: What - - what are you looking for?

Q: Deed Liber 659, folio 580.

THE COURT: Okay. Do you think it was yesterday?

Q: Yes. It was the Pry/Butts.

THE COURT: Was it a Justin Holder?

Q: Yeah, that's it.

THE COURT: You have it? You have it?

Q: Yes. I'm going to hand him Justin Holder Exhibit Nine. Are you familiar - - take a - - take a minute take a look at…

A: Yes, I'm familiar with this.

Q: Okay. And on that deed, there's a certain - - there's several parcels on that deed. Is that correct?

A: Yes.

Q: And the parcel that ultimately became Stonecrest and some land across Dogstreet Road, the Butts' parcel, is that Parcel number 3?

A: Yes. I believe that's correct.

THE COURT: Let me stop you here. The Mrs. Butts' Parcel 3.

Q: Yes, Mrs. Butts' Parcel 3.

THE COURT: Okay. He doesn't under- he might not understand the difference between the two Parcel 3s that we've already discussed in this case. Okay?

Q: Yes. Yes, Your Honor.

THE COURT: I'm going to clear it up for him. Mr. Nagel, in this case, there are two pieces of land that are called Parcel 3.

A: Okay.

THE COURT: Okay? There is a large piece of land that I think might have gone across Dogstreet Road, may - - may at one time have gone across what was the railroad property. And we've - - we've described that as Mrs. Butts' Parcel 3.

A: Okay.

THE COURT: A big piece of property. The other Parcel 3, we call the Young Parcel 3, which is a small sliver of property.

A: Right.

THE COURT: That Mr. Young claims he got by deed.

A: Mm-hm.

THE COURT: About 12-feet wide, about 450-feet long, right adjacent to the back of Stonecrest. Do you understand?

A: Yes.

THE COURT: So when we are testifying today and when we are asking questions, I don't want to just throw the word, "Parcel 3," out there because that's going to be a problem. If we're talking about the Butts' Parcel 3, we have to call it the Butts' Parcel 3. If we're talking about the sliver behind Stonecrest, that is the Young Parcel 3, for purposes of our discussion. Do you understand?

A: Yes, sir.
THE COURT: Do you understand?
Q: Yes, I do.
THE COURT: Very well. Go ahead.
Q: So Parcel 3 purports to be part of Fellfoot Enlarged…
THE COURT: You just said…
Q: The Butts' Parcel - - Butts' Parcel Number 3, I apologize.
THE COURT: It's okay.
Q: I'm hard-headed, Your Honor. You got to beat it in sometimes.
THE COURT: Well…
Q: Okay. The Butts' Parcel 3 purports to be part of survey, two - - two land patents is that…
A: Uh, yes.
Q: Which - - which two land patents?
A: Hillsdale and the vineyard. And it calls it, "Tells Foot Enlarged." But I believe they mean Fellfoot Enlarged.
Q: And on that deed on the - - the following page…
THE COURT: Which deed are you on?
Q: The deed 659/580.
THE COURT: Which exhibit?
Q: Which is Defendant Justin Holder's Exhibit Number

Nine.

THE COURT: Okay.

Q: Does it purport to run with the lines of NN520?

A: It does.

Q: And on this - - are either of those lines drawn on Plaintiff's Exhibit Eight?

A: Uh, the second and third line or at least a portion of the second line and the third line are drawn.

Q: Would the third line be the line starting at this planted stone, the northwest corner?

A: May I?

THE COURT: Yes, sir, you may.

Q: Yeah, yeah.

A: This is the portion of the second line and this would be the third line right here.

THE COURT: Okay. So he just pointed to what would be the…

A: Be the northern boundary.

THE COURT: …northwest line of the panhandle of Parcel 1 and what I would call the interior line as shown on that plat running south to north on the western edge of what is described on that property. Is that right?

Q: Yes. Yes, Your Honor.

THE COURT: Okay, that's what he pointed to. So those two lines came out of deeds that are Justin Nine - -

Justin Holder Nine and Justin Holder Twenty-nine.

Q: Yes, Your Honor.

THE COURT: Understood.

Q: And on Justin Holder Twenty-nine, deed NN520, September 10th, 1832, David Hess, does the fourth line begin at this planted stone and where does it terminate?

A: It terminates in the Antietam Creek.

Q: Okay. And then…

A: To the east.

Q: On deed NN520, Exhibit Twenty-nine Justin Holder, are there certain calls with circles around them at the top? If you look, is there little circles with numbers in them?

A: I don't have that exhibit anymore.

Q: Uh, it's in the work product.

A: Oh, okay. So we're talking - - I'm sorry, can you repeat the question?

Q: Uh, after the fourth line…

A: Uh-huh.

Q: Uh, do the calls have a num- a number and a circle on described into the deed?

A: They do. Someone has added those, yes.

Q: Okay. And who - - would you have any idea who would add them?

A: No. Someone in the courthouse more than likely.

I'm not sure if it was a - - a surveyor or it could have been anybody.

Q: Okay. And is there nine of them?

A: Uh, there's actually fourteen.

Q: Well if it starts at number five - - does it start at number five?

A: It starts at one.

Q: Okay.

A: Yeah, it starts at one and goes down…

MR. PEMBROKE: Objection.

A: …to fourteen.

Q: Okay.

THE COURT: Overruled.

Q: And if you look at the deed, Exhibit Nine, Liber 659, folio 580, after the third line of NN520, does the deed go with the Baltimore and Ohio Railroad?

A: It calls it out as the Washington County Railroad. But, yes, it says, "Bounding thereon."

Q: Okay. Then three calls later, does it join up with the fourteenth line of deed NN520?

A: Yes, it does.

Q: So bringing the tax map back up and just generally could you show the Court - - would - - would that deed's…

THE COURT: Have him step down.

Q: Yeah, could you just show…

THE COURT: And you ask him a question in his opinion, what does that mean with relation to property lines, rec- recognizing of course we're looking back in the 1830s.

Q: 1830s, yes.

THE COURT: Okay.

Q: Could…

THE COURT: Have him step down.

Q: Could you step down and show the Court approximately on this tax map where the second, third, fourth and then to the fourteenth line.

A: This would be a portion of the second line. This is the third line. And then the fourth line departs and comes across here and goes up this way. It terminates somewhere up in here.

THE COURT: First indicating the panhandle from Dogstreet back to Plat 180. Then indicating what is the eastern edge of Stonecrest Lots 10 through 14, and then across the DNR property or abandoned railroad property and then towards the Antietam Creek and generally creating a division maybe between Uncle Eddies and Mr. Estes, which is a whole different case than this.

Q: Right. And then…

THE COURT: Okay.

Q: Does it continue around the creek and meet back up with the west side of what is Parcel 288 now?

A: Uh, does what continue?

Q: The - - the…

A: The…

Q: I'm sorry. Exhibit Twenty-nine, the 1832 deed.

A: Yes, it does. It goes up and comes back around. This being the fourteenth, a portion of the fourteenth line and then it goes down fifteenth. And this would be a portion of the sixteenth down here.

Q: And so…

A: So this - - this whole boundary, this western boundary of Stonecrest is the fourteenth, fifteenth and sixteenth line of NN520.

Q: Thank you.

THE COURT: All right.

Q: And…

THE COURT: Can he sit down? Or do you need him…

Q: He can - - he can sit down.

THE COURT: Okay.

(Whereupon the witness returns to the witness stand.)

Q: So back to when we were reviewing the title, and you had located the second stone on this wagon road, uh, what part of the metes and bounds description starts at that stone? It changes from courses and distances to just a - - a boundary line perhaps?

A: I'm not sure I understand your question.

Q: Okay, the metes and bounds description of the Cost wagon road is - - then to David Kretzer, his heirs and assigns forever starting at Cost Crossing…

MR. PEMBROKE: Objection.

Q: …there's two courses and…

THE COURT: Hang…

Q: …distances.

THE COURT: Hang - - you're - - you're testifying.

Q: Okay.

THE COURT: Okay?

Q: Would you like me to…

THE COURT: Stop for a second. It sounds like you have question in the 1872 deed…

Q: Yes.

THE COURT: About how the wagon road was described.

Q: Yes, Your Honor.

THE COURT: Right?

Q: Yes.

THE COURT: Starting at the Cost line.

Q: Correct.

THE COURT: What is your question about how it's described?

Q: In the metes and bounds description of the wagon road, would it help if I gave you the writ- can I give him the written description that we…

THE COURT: You absolutely may. It's an exhibit.

Q: Okay, yes. Could you please provide him for description of the (unintelligible)…

THE COURT: Do you remember the - - the one that they typed…

Q: There's two cop-…

THE COURT: …up the cursive - - they typed up a cursive deed. One of them is really big, and one of them is small.

Q: That was probably…

THE COURT: Ms. Peeples probably put it in. Deena Holder…

MS. PEEPLES: It's Deena Holder - - hang on.

THE COURT: Three and Four.

MR. PEMBROKE: Three or Four.

THE COURT: Yeah.

MS. PEEPLES: Mm-hm.

THE COURT: Sounds right. You can give him the big one or the small one. I'd like to have the other one if that's okay.

Q: And just for the record, I understand Your Honor's point about volume.

THE COURT: It's just when you sit - - it's okay. I need to be sure that you stay close to a microphone. Okay?

Q: Which one would you like, sir?

THE COURT: It doesn't matter, whichever one you want him to have. Okay? So he's going to be looking at - - the witness will be looking at Deena Holder Four, which is the smaller version. I'm going to be looking at Deena Holder Three, which is the larger version. Mr. Holder, when he starts reading, if you could just show me where I need to be on Deena Holder Three. Where do I need to be starting? Just point generally to it.

Q: The use of a wagon road right…

THE COURT: Use of a wagon a road, got it. Okay.

Q: Okay so the use of the wagon road, there's a - - there's a first metes and bounds call that you've identified going to a stone somewhere behind Lot 9. Is that correct?

A: Yes.

Q: And then there's a second metes and bounds call you identified going to a stone somewhere behind Lots 9 and 10?

A: That is correct.

Q: And then you identified that stone on Plaintiff's Exhibit Eight as being the stone in the northwest corner.

A: Uh, northeast corner but, yes.

Q: Okay. I'm - - northeast, okay.

THE COURT: He - - I - - I think you're - - you're

doing it based on what you - - how we have that oriented. Right? The top left of the document. But really if we put it to true North, then it's the northeast corner of that plat. That's what Mr. Nagel's saying. Is that right?

A: That is correct.

THE COURT: Okay.

A: Yeah.

Q: I trust myself…

A: And the north…

THE COURT: If you want to - - if you want to put that over 90 degrees. No just stick it - - no, flip it. Right there, stop.

Q: Right - - right here?

THE COURT: Yeah.

Q: Okay. All right and…

THE COURT: Do you see what I mean?

Q: Yes. Yes, Your Honor.

THE COURT: Now we're looking at apples and apples.

Q: Got it. And…

THE COURT: Okay.

Q: …the next call on the wagon road is - - is to what? The next course and distance on that wagon road description.

A: To the lands of Jacob Keedy.

Q: Okay. Are you aware in 1872 when that was written where the lands of Jacob Keedy would be?

A: Uh, yes. It would have been to the south of that line that is that terminates at the stone. Which would have been the…

Q: The Liber…

A: …third line.

Q: Which you identified earlier as the third line of NN520?

A: Correct.

Q: Okay. And then when you identified and went in the field and surveyed this for me, did you find any discrepancies in the boundary and the title work?

A: The boundary for Stonecrest subdivision, the boundary line between Stonecrest subdivision and Mr. Young's property, I - - I, in my opinion, was delineated incorrectly based on the deeds and what was conveyed.

Q: Okay. And…

A: I think they - - well never mind, go ahead.

Q: When you're surveying, is there a priority of calls in a deed?

A: Yes. Normally, monuments can control, natural monuments and then artificial monuments. And then from there it goes down. There's a hierarchy and you can - - and you get into bearings and distances and, you know,

well you have adjoiners and then bearings and distances in the area is way down the bottom so.

Q: And…

A: It's natural monuments and then artificial monuments usually govern.

Q: What would be an example of a natural monument?

A: A natural monument would be like a ridge, a creek and something to that effect, a tree.

Q: What would be an example of an artificial monument?

A: A stone that was set by a surveyor or a, you know, some other kind monumentation like we use today with pipes or rebar, concrete monument, things like that.

Q: Okay. And then you said the next, uh, would be an adjoining boundary?

A: Yeah, when you get into a dispute, if there's an overlap or a - - well a boundary can be if someone else's boundary can become a monument if it's called for in the deed. Or a fence can become a monument if it's called for. Uh, you know, or then you get into senior, junior rights. If there was an issue with where the line is located in the field, you know, who had the property, which one was conveyed out first, things like that.

Q: And - - and did you examine - - can I see Plaintiff's Exhibit One please?

THE COURT: One?

Q: Can you - - have you examined that in doing your work, that deed?

A: Yes, we have.

Q: Okay. I believe it's the seventh line on that deed, can you find a spot on that deed where it runs with the lines of Leonard Dorsey?

A: Yes.

Q: Okay. And in that - - and in that deed, do you - - do you - - in your professional opinion, do you believe that the calls agree with the courses and distances?

A: Uh, that would be difficult for me to determine without sitting down and plotting it up. And I don't know what you mean by, "Agree with." Agree with what?

Q: I'm sorry. Is - - is the call to the lands of Leonard Dorsey, does that agree with the courses and distances in 1988?

A: Again, I'm not really quite sure exactly what you mean, "Agree with." Uh, the bearings and distances define the lines mathematically or geometrically. But then the boundary line that's call for lands of Leonard Dorsey, I would have to examine that deed to see if they agreed with these bearings and distances or at least the angles agreed. So I'm not sure I can really follow exactly what you mean by, "Agree with."

Q: Yeah probably I went too - - this is Plaintiff's Exhibit Three, and it's a survey that's associated - - that - - that Plaintiff's experts identify as associated with. And I don't know if you want to come down and look at it and see if you've examined this before.

A: Yes, we have. We looked at this when we did the survey.

Q: Okay. Does it show the lands of Leonard Dorsey to the west?

A: It does, yes.

Q: And in 1988, when they - - when they granted that, uh, do you believe that the title line would have been the thinner line to the right or the thicker line to the left on the north…

A: I believe the line was over here to the - - to the - - based on this north would kind of be the east. This line right here. This is where I think there was a mistake made in my opinion. The road used to be right here. There was a fence.

THE COURT: I'm sorry, say it again. The road…

A: Yeah, there was an old road…

THE COURT: Mm-hm.

A: …that shows up. It was between these two lines.

THE COURT: Okay.

A: That fence on we have - - we had acquired

photogrammetry from the 40s or 50s on up when that road was there. And it appears that they moved the boundary line from the east side of the road or the south side based on that drawing to the north side.

Q: And - - and you had identified that when locating the road?

A: Yes.

Q: By locating monumentation in the field?

A: Yes.

Q: Okay.

A: The stone places the line on this - - on the south side of the road. And like I said, when you lay all that in everything with the original or the NN520 calls and pre- and successive calls of the deeds, it comes out so that it's on the south side of the road, not the north side as shown on here. The farther - - I agree with that when the Wicklines conveyed the property, they specifically stated in the deed that they would not warranty that strip or the piece down here. So that kind of gave me the feeling that they didn't really believe or know that that was there.

MR. PEMBROKE: Objection.

THE COURT: Sustained.

Q: I'm gonna hand you Defendant Justin Holder's Exhibit Nineteen. That's number One, which Plaintiff's

Number One is to the clerk. There's a surveyor certificate in that exhibit.

A: Yes.

Q: And did you prepare that surveyor certificate?

A: Uh, yes, I prepared the description, which has - - contains the certificate, yes.

Q: I'm sorry, with the property description.

A: Yes.

Q: And you did that after locating monumentation in the field?

A: Yes, we did.

Q: Did you discuss any of that work with Gary Castle?

A: Uh, briefly, he had contacted me just asking me what…

MR. PEMBROKE: Objection.

THE COURT: Sustained. He can't testify about what Mr. Castle said.

Q: No, I just wanted to know if he contacted him first.

THE COURT: Okay.

Q: Uh, and then after that are you aware that I obtained a quitclaim deed from Mr. Castle for what you had prepared a survey description for?

A: Yes.

Q: Okay. And does that survey description, does it

describe Parcel 3 as shown on Plat 2499? Or does it describe Parcel 3 as shown on folio 778? Or is it something totally different?

A: I believe it was different.

Q: What - - could you explain to the Court what the differences are?

A: The differences are based on what we actually discovered in the field and how we interpreted the previous deeds and the lines with the evidence that we found out in the field.

Q: Okay. And…

A: And…

Q: Are you - - are you aware of what the property in this Complaint, the Judge calls it Mr. Young's Parcel 3, that he's asking to have the Court decide he's - - require title by adverse possession? Are you familiar with adverse possession?

A: Yes.

Q: Okay. And are you familiar with Parcel 3 on Plat 2499?

A: Yes.

Q: Are there additional lands outside of Parcel 3 described on that survey certificate?

A: I believe so, yes. Yes.

Q: Okay, and when you wrote that survey certificate

reviewing all the title, finding the monumentation in the field, what degree of certainty do you have that that - - that land had escaped, and I have the…

MR. PEMBROKE: Objection. There's no testimony that land escaped at this point.

THE COURT: Well he answered that he - - his description includes more land than what is shown as Parcel 3 on 249 - - 2499. So isn't that what he's saying is escaped land?

MR. PEMBROKE: I don't…

THE COURT: Is that what you're saying is escaped land? Or is there more in that description than even this Parcel 3 area?

A: There's more in this description than Parcel 3.

THE COURT: Objection sustained.

Q: Okay, can you - - can you tell me how much there is compared to - - roughly?

A: It's not a huge area. I don't remember exactly what the, uh, the area was as far as square feet or acreage.

Q: Could you - - could you read the description you prepared and - - and bring it down possibly and show the Court roughly where it is? Whichever - - just identify what exhibit you want up, and I'll…

A: Uh, we can use this one right here.

Q: That's Plaintiff's Exhibit Three.

THE COURT: Okay.

A: So it began this - - let's see if I can remember here. I believe it starts up here, ran down…

THE COURT: Starting up there. Describe to me where you are.

A: Uh, at the - - near where the stone is, but there was a - - there was this point was part of the Stonecrest subdivision, I guess the corner of the Stonecrest subdivision. Well, I'm sorry. Beginning at the stone, the stone which we found which is not shown on this drawing. They didn't show the stone. So, sorry, maybe this would be a better one to use.

Q: Okay. This is Plaintiff's Exhibit Eight.

A: So the description starts here at this stone. And then it runs in this direction…

Q: Generally northwest?

A: Yes.

Q: How far?

A: Uh, 23.68 feet.

Q: Okay.

A: Which takes you to the corner, which would be Stonecrest…

Q: I think that's…

A: …of Lot 14. So it runs over to this corner of lot

- - sorry. No, I'm - - I'm telling you wrong.

THE COURT: Okay. Start over.

A: Sorry.

THE COURT: Let's start…

A: It starts at the stone.

THE COURT: Yeah. 23.68 feet.

A: Well it starts at the stone and goes 451 feet down.

THE COURT: Okay.

A: And then it cuts across to the corner of Lot 14, which is that point right there.

THE COURT: How - - how far of a distance…

A: That's…

THE COURT: …to Lot 14?

A: That's 23.68 feet.

THE COURT: Okay.

A: And it runs back up along at the rear of these lots to this point here.

THE COURT: The rear of Lots…

A: 9 and 10.

THE COURT: 15 or…

A: That runs…

THE COURT: …14, 13, 12, 11 and 10?

A: 10, yes, to that point there.

THE COURT: How far is that distance?

A: It's 484.83 feet.
THE COURT: Okay.
MR. KLINE: I'm sorry, did he say 484?
THE COURT: Yes.
MR. KLINE: Thank you.
A: Yeah. And then it comes back across to the stone.
THE COURT: Mm-hm.
A: I had a sketch with this. Anyway, it comes up to the right of way. It doesn't go back to that stone yet. It runs along the - - the right of way for the Washington County Railroad, which is now the State - - State of Maryland Department of Natural Resources for 25.71 feet. And then it continues along at a - - at angle break there for 2 1/2, 2.57 feet to a point. And then from there…
THE COURT: And now we are - - we are east of Lots 9 and 10.
A: Yes. And then from there, it runs back to that stone.
THE COURT: Which stone? Down - - down the 480 - - 451 feet?
A: Yes. The stone at the end of the third line.
Q: On Plaintiff's Exhibit Eight.
A: Yes. Which is the point of beginning.
Q: (Inaudible portion) on record. So you have to say the exhibit as.

A: Okay.

THE COURT: Okay.

A: Yeah.

Q: Would you - - would you be able to make, if I gave you a piece of paper, a quick sketch for the Court of what it would look like? Would that take too long?

A: I can do something rough, yeah.

Q: Okay.

A: Here you go.

Q: Thank you.

THE COURT: Show that to Mr. Pembroke please.

Q: Yes.

THE COURT: May I see it?

Q: Certainly. Your Honor, I ask this marked and be moved into evidence.

THE COURT: You can mark it and then you can ask him about it. And then we'll decide if it's going into evidence.

Q: I'm gonna hand you what's now Defendant's Exhibit Thirty-five. Can you identify Exhibit - - Defendant Justin Holder's Exhibit Thirty-five?

(Defendant Justin Holder Exhibit No. 35
Marked for Identification)

A: It's a sketch I just made of the description from the quitclaim deed at Liber 6370 and folio 249.

Q: Justin Holder moves to have Justin Holder Exhibit moved into evidence.

THE COURT: Mr. Pembroke?

MR. PEMBROKE: No objection.

THE COURT: I have a quick question about it. Does any portion of what you just drew, and I realize it's just you're demonstrating what it would like, and if you had more time, I'm sure it would look…

A: Yes.

THE COURT: …much straighter and much better.

A: Yeah.

THE COURT: I understand that. Does any portion of that Parcel Number 3 you just drew, part of Parcel Number 3, right?

A: Yes.

THE COURT: That does not - - does any portion of that include what is described as the Young Parcel 3 on Plat 2499 and in his deed?

A: Yes.

THE COURT: Your drawing contains some of the…

A: It contains most of that. This Parcel Number 3 is the Butts' Parcel Number 3.

THE COURT: It's a remainder of - - it's a part of or a remainder of the Butts' Parcel 3?

A: Correct. Which…

THE COURT: Okay, because the Butts' Parcel 3 was much larger. Correct?

A: That is correct.

THE COURT: Okay. So what you just drew contains some of the Young Parcel 3 as it's shown on Plat 2499?

A: Actually, I believe it contains all of that in addition to a little piece up here. This part…

THE COURT: Does it contain - - does it contain any more than the Young Parcel 3?

A: Yes.

THE COURT: How much more?

A: I'm not exactly sure. I'd have to look at that. But it - - it's a small amount.

THE COURT: Okay.

A: You're talking maybe 10 or 15 square feet, not a lot.

THE COURT: 10 or 15 square feet? Okay. I just want to understand.

A: From - - from what I can remember, yes.

THE COURT: Okay. So - - so that I am clear…

A: Mm-hm.

THE COURT: And what exhibit is that, Mr. Holder? I'm sorry.

A: Thirty-five.

Q: Thirty-five.

THE COURT: So Justin Holder Thirty-five is a document that Mr. Nagel drew here in court based on his description of the property that he - - that - - that was then appended to your deed.

Q: Correct.

THE COURT: Your quitclaim deed.

Q: Correct.

THE COURT: And he drew it just now based off his description. I understand that it's rough. And I understand from you, Mr. Nagle, that that property you just drew me is all of the Young Parcel 2 plus 15 square more feet?

A: Yeah.

THE COURT: 15 more square feet.

MR. KLINE: I think it's Parcel 3. You said, "Young Parcel…

A: Yeah, it was Parcel…

MR. KLINE: …2."

THE COURT: I'm sorry.

MR. KLINE: And you meant to say, "3."

THE COURT: Young Parcel 3…

A: Yes.

THE COURT: …which goes along the back edge of Stonecrest Lots 10 through 14 plus 15 more square feet?

A: Yeah, that doesn't really give you an area. Yeah,

I - - I can't remember if it's 15 or…

THE COURT: Okay.

A: …9 or 20…

THE COURT: Where - - where's that extra 15 square feet?

A: It's between this boundary line and the right of way for the Western Maryland Railroad.

THE COURT: You - - you pointed somewhere. I didn't see where you pointed.

A: I'm sorry. On this Exhibit - - Exhibit Three…

THE COURT: Mm-hm.

A: It's between this boundary that's shown on here and the location of what's they're calling as the Baltimore and Ohio, but the Washington County Railroad.

THE COURT: So it's area out into what is shown as the railroad on Plat 2499. Is that correct?

A: That is correct.

THE COURT: Okay.

A: And…

THE COURT: So if I take off that, you just drew Parcel 3 for me. Correct? You just drew Young Parcel 3 for me.

A: Basically, yes, yeah.

Q: And…

THE COURT: And - - and - - hang on. We haven't

admitted the exhibit yet. I want to be sure that I understand what Exhibit Three is. That's what I want to be sure of. And so that I understand, you believe that that was, I'll use the word, "Escaped," escaped land because you're not acknowledging, as a surveyor, Mr. Young's deed?

A: That is - - that was land that was included in the Butts' Parcel 3 that was not included in the Parcel 3 in Mr. Young's deed.

THE COURT: Well you just told me that this exhibit is Young's Parcel 3.

A: Yes. I'm talking about the extra land. The - - the…

THE COURT: What extra land?

A: …15 - - the 15 or so feet. That was part of…

THE COURT: The 15 extra feet that are sort of into the railroad…

A: Yes.

THE COURT: …property.

A: The Butts' Parcel 3 ran to the railroad right of way. That plat stops shy of the railroad right of way. So it left…

THE COURT: 15 square feet.

A: Roughly, yes, whatever that was.

THE COURT: Okay. But - - but your description…

A: Mm-hm.

THE COURT: …that Mr. Holder then used…

A: Yes.

THE COURT: …to get a quitclaim deed from Mrs. Butts included what is described as Mr. Young's Parcel 3?

A: Correct.

THE COURT: And, therefore, to add that into the description, does that mean you ignored Mr. Young's Parcel 3, his deed to Parcel 3?

A: Yes.

THE COURT: Okay. The exhibit will be admitted.

(Defendant Justin Holder Exhibit No. 35 Admitted Into Evidence)

Q: I'm looking back at the tax map. It's Plaintiff's Exhibit Ten. And there's a portion on it that says, "Parcel 180," by - - or 2499 here in the corner.

A: Yeah.

Q: Do you see what I'm pointing to?

A: Yes.

Q: And with - - with the area you were just describing, the - - near or - - or over between that line where it's sort of…

THE COURT: Start again, Mr. Holder. I - - I was writing.

Q: I'm sorry.

THE COURT: I can't see.

Q: So I'm - - I'm looking here at this tax map, Plaintiff's Exhibit Ten. And right where it says, "2499," it's behind Lots 9 and 10, this line that - - that moves up along the railroad right of way line, does it appear to you that it lines up with the - - the back of what is Lots 9 on the Stonecrest subdivision plat or tax map?

A: No. The tax map shows the jog.

Q: And - - and is that jog basically the, what - - what I called earlier, an escaped parcel?

A: A portion of that, yes, yeah.

Q: And earlier, it was identified that Mr. Frederick did his description with corrected bearings and distances. Is it your professional opinion that his corrected bearings and distances were not accurate on Plat 2499?

A: Yes, I believe that it was off.

Q: Okay.

THE COURT: Mr. Holder…

Q: Yes.

THE COURT: Could we stop for just a moment?

Q: Yes.

THE COURT: Okay, I just want you to gather what you're - - what you're thinking. Okay? Because I want to ask him a question and with your permission.

Q: Absolutely.

THE COURT: Okay. Do you still have your pen with you?

A: Yes, I do.

THE COURT: Counsel, I would like to ask the witness to take this drawing, Number Thirty-five, and draw in where the 15 extra square feet are.

MR. PEMBROKE: That's fine.

THE COURT: Do you have a problem with that, Mr. Pembroke?

MR. PEMBROKE: No, sir.

THE COURT: Mr. Holder?

Q: Uh, no, Your Honor, not at all.

THE COURT: Okay. Do you mind just…

A: Yeah.

THE COURT: I have a feeling I know where it is. But I want to be sure what you're saying is the extra 15 square feet. And also, you've identified it as the remaining lands of Parcel Number 3?

A: Mm-hm.

THE COURT: Would you mind after the word, "Number 3," put, "Butts, B-U-T-T-S?"

A: Right.

THE COURT: So I understand what you're - - you're talking about Mrs. Butts' Parcel 3 when you draw this. Right?

A: That's correct. That's why I used…
THE COURT: Because you're calling it remaining lands.
A: I did the deed reference right after…
THE COURT: I know you did. I know you did.
A: But I can write that.
THE COURT: And I know what that means.
A: Right.
THE COURT: But when I flip through this another day…
A: Yeah.
THE COURT: I - - I don't want to forget what Liber 659 means. I want to remember that that means Mrs. Butts.
A: Absolutely.
THE COURT: Okay, thank you. So show me where the 15 feet is and show - - and label that indication as, "Butts." The issue is, Mr. Nagel, you're writing it the way engineers and land surveyors do, which is perfectly fine. But I need a little more guidance sometimes. We'll have the record reflect that Exhibit Number Thirty-five is being altered to add what I've asked for, the extra 15 feet and the notation of Mrs. Butts.
A: Hatched area that was Parcel 3 of Young. If that helps…
THE COURT: Okay.
A: …explain that.
THE COURT: So the hatched area is…

A: Does that help or not?

THE COURT: …the Mr. Young Parcel 3. The unhatched area at the very top, the smaller portion, is the extra 15 feet and the POB next to it is, "Point of Beginning."

A: For the description, yes, correct.

THE COURT: Okay. The extra 15 feet, based on your review…

A: Yes.

THE COURT: Does - - does it encroach on deeded property to someone else or is it truly escaped?

A: No. If you plot out the Parcel Number 3, the Butts' Parcel 3, that's the area it agrees with the right of way or DNR's property. So, no, there's no - - there's no other deed. It was - - I believe it was just left off, you know, when - - when Stonecrest was sold off to…

THE COURT: Mm-hm.

A: …the developer when they first did it, that piece got missed.

THE COURT: Got missed?

A: Yes.

THE COURT: So it was never supposed - - do you think it was never supposed to be DNR property? It was really supposed to be Stonecrest property? If it…

A: Well actually DNR I don't think claims that.

THE COURT: Okay.

A: I think it's just - - yeah. So I - - I believe in the deed for the Stonecrest did say, you know, it was supposed to be all (unintelligible). So I believe that it was conveyed to them. It just wasn't captured in the plat when the plat was done.

THE COURT: The 15 feet?

A: Yes, that area.

THE COURT: Okay. Very well, thank you.

Q: And I think you explained this, but what was the result of the discrepancy and - - and the survey where - - between Plat 2499 and what you found? I think you just described it was that parcel you just drew?

A: Yes.

Q: When you were talking about it earlier, delineation of Stonecrest, and I might have cut you off. Do you remember what you were saying about the delineation of Stonecrest?

A: No, I do not.

Q: Okay. I'm gonna hand you what has been marked as Defendant's Exhibit Fourteen. See if you can identify that.

A: This looks similar to the sketch that was done by Mr. Dowling. Is that correct?

Q: If you can't identify it, I can't…

A: Okay. Uh…

THE COURT: Did you draw that?

A: I did not draw this, no. All I can say, I don't -- I don't know for sure, but it looks similar to one that I've seen that Mr. Dowling did prepare.

Q: Would you find anything on that sketch that would be helpful in the Court deciding this case that you can attest…

MR. PEMBROKE: Objection.

THE COURT: Sustained.

Q: Are you able to identify with specificity what's drawn on that drawing?

A: It appears that these are SAT plotting lines…

MR. PEMBROKE: Objection.

A: …or D plot…

THE COURT: Sustained. You can't get into the substance of what is on the document until it is admitted in evidence.

Q: Are you familiar enough with that document to testify about it?

MR. PEMBROKE: Objection.

THE COURT: Sustained.

Q: I'm just not going to move it into evidence. This is already in actually.

THE COURT: What is? Let me see.

Q: The railroad bound-…

THE COURT: That's not - - well it's…

Q: I'm sorry. It's already marked.

THE COURT: It's already marked. Use - - use the marked one then.

Q: Okay. Mr. Nagel, I'm gonna hand you a drawing marked as - - okay, Defendant Exhibit Eleven, Defendant Justin Holder. Could you examine that document?

THE COURT: You can hold the…

A: Okay.

THE COURT: That's okay. He's got it. Go ahead, Mr. Holder.

Q: Are - - are you able to - - is that a document you worked with in forming your opinion for this right of way?

A: Uh, I can't say for certain if it was this exact document, but one very similar to this, yes.

Q: Okay. Are you familiar with what that document is?

A: Yes.

Q: Can you describe for the Court what it is?

A: It's a right of way you track map. And this was done for the Baltimore and Ohio…

MR. PEMBROKE: Objection.

A: …Railroad Company.

THE COURT: Hang on. It's okay. He's just describing that it's a right of way map for Baltimore Ohio. Next

question.

Q: Can you - - on that document…

THE COURT: You can't talk about the substance until it's admitted into evidence.

Q: Have you - - have you in your experience in survey work used track maps and right of way work to conduct the survey work?

A: Yes, I have.

Q: Are they valuable resources in defining property lines?

A: They're certainly a helpful aid, yes.

Q: Does the part of the wagon road call along a railroad right of way line?

A: I believe it did, yes.

MR. PEMBROKE: Objection.

Q: Is that why…

THE COURT: Overruled. It's not about this document. It's about the call from the 1872 deed.

Q: Is that why you decided to use a railroad and track map in assisting you?

A: Uh, not initially. We decided to use it because of the boundaries of Uncle Eddies adjoins a right of way.

Q: Okay. And later on, did you decide to use it to help you and in determining…

A: Yes.

Q: …the right of way?

A: I'm sorry, yes.

THE COURT: The wagon road right of way?

Q: The wagon road - - the wagon road right of way we've been talking about?

A: Yes.

Q: Your Honor, may I admit Exhibit - - what exhibit is that? Thirteen?

MR. PEMBROKE: Objection.

THE COURT: What's the objection, Mr. Pembroke?

MR. PEMBROKE: He said he used a map.

A: Eleven.

MR. PEMBROKE: He didn't say he used that map.

THE COURT: Mr. Holder…

A: Yes.

THE COURT: The witness did not identify this map as the one he looked at. He said, "Yeah, I looked at a track map, but I'm not sure that it's this one."

A: It was me. Can I - - can I clarify?

THE COURT: I - - I would like you to clarify, yes, sir.

A: Okay. It was - - it was the same valuation map. I'm not sure if it was this exact copy. This may have additional markings on it than the one that I had access to at the time.

THE COURT: But you did look at a…

A: It would…

THE COURT: …track evaluation map?

A: Yes. And it would be this exact same val map. It's just there are - - they consider these living documents. So they being the railroad. They would mark them up. And the one that I had may not or may have been more recent than this one. I'm not sure.

THE COURT: And when you say, "Marked up," is it the yellow and orange indications that I see there?

A: Yes, that is correct.

THE COURT: And who does that sort of mark up?

A: That would be the - - whoever owned - - well it would have been the railroad owned it.

THE COURT: Okay.

A: Yeah.

THE COURT: When you looked at this type of document during your research for this case, would - - would the yellow or orange indications mean anything for drawing your opin- making your opinion?

A: No, not really.

THE COURT: Okay. But you think you looked at this exact one - - well you looked at this track map but maybe not the one that's in your hand?

A: It may not have had all the yellow and orange

markings, yes, or as many, I guess.

THE COURT: Objection's overruled. It's - - it will be admitted. It's a document he reviewed. But he did not rely on the yellow or the orange, which are the only changes.

(Defendant Justin Holder Exhibit No. 11 Admitted Into Evidence)

THE COURT: Is that the one he looked at?

Q: No, this is just a blow-up of what we're gonna be talking about for the Court's convenience if you would like. And I - - I just thought that it would help you out with the (inaudible portion).

THE COURT: Show it to Mr. Pembroke. You're going to probably need to keep that with you. So just…

A: Okay.

THE COURT: …keep it there. Have the witness identify that as a portion of the map blown up. And then we'll use it as a demonstrative exhibit for the Court.

Q: Can you identify that document?

A: Yes, it's a portion of the val map.

THE COURT: Okay.

Q: Is it the portion that might be relevant to this particular substance of your testimony?

A: Uh, I would say, yes. Yes.

Q: And do you see what - - what you describe as the

wagon road right of way depicted on that?

A: Uh, the right of way is not depicted. But the location of the road as well as the fencing that ran along the road, which we were able to pick off of aerial photographs is shown, yes.

Q: Okay, and when - - and when you say the fencing, is that fencing drawn on Plaintiff's Exhibit Thirteen?

A: I'll take - - take a look. Yes. It's this fence right here.

Q: Which is…

THE COURT: Okay, let me - - you're indicating inside the forest conservation easement?

A: Yes, inside the forest conservation easement and runs across Lot 9 and a portion of Lot 10.

THE COURT: Okay. Out of curiosity, what's the date of that track map in your hand?

A: I believe it's from June 30th, 1918.

Q: And on - - is it all right if I hand this to…

A: Yeah, yes.

Q: On that particular portion of track map where you saw the - - the road following the fence line behind Lots 9 and 10 on Stonecrest, Plaintiff's Exhibit 13…

A: Yes.

Q: Is there a portion of that road that at least the railroad shows crosses over their right of way line or

mixes in with it?

A: Yes. It shows a private crossing on that as well as on here, private road crossing.

Q: And - - and as it goes up behind where you located the stone behind Lot 8 and 9, is there a portion of the road that actually crosses to the north of the right of way line shown on the railroad? When it crosses the line.

A: Uh, it crosses to the east but, yes.

THE COURT: Do you mean crosses into the railroad property?

Q: Crosses into the railroad property slightly.

A: Yes.

Q: Okay. And on that map, is there any private road shown that when you exited the properties that are now Deena Holder and Uncle Eddies' properties shown on Plaintiff's Exhibit Ten as Parcel 127 that you could turn right on that map? Is there any road depicted that you could turn right?

A: Uh, I'm not sure what you mean by turn right.

THE COURT: Mr. - - Mr. Holder, I'm gonna save - - I'm gonna save you on this, I'll take judicial notice there's no road that turns right out of the Holder properties on this blue…

Q: That…

THE COURT: …track map.

Q: …is very…

THE COURT: I see it.

Q: Yes. And lastly, you said you used an aerial photo to identify some of the properties. And earlier on I had some witnesses testify about this photo, which I don't know if we labeled it or not. Do we…

THE COURT: I feel like that's a blow-up that we used…

Q: This is a blow-up.

THE COURT: …for demonstrative aid…

Q: That's…

THE COURT: …only.

Q: Yes, I agree. Yeah, it's mine. It's when Mr. Levey came in. It might be an aerial photo.

MR. CLERK: Six?

Q: No Six is the photo of (inaudible portion). There it is.

THE COURT: Number Ten?

Q: Yes.

THE COURT: Hold - - hold…

Q: Plaintiff's Exhibit Twelve.

THE COURT: Plaintiff's Twelve?

Q: Or, I'm sorry. Defendant Justin Holder's Exhibit Twelve.

THE COURT: Okay.

Q: I'm gonna hand you Defendant Justin Holder's Exhibit Twelve. There's a blow-up. Is this one of the aerial photos you used in identifying what you - - what you said is fences and property lines and roadways in the area?

A: Yes.

Q: Where did - - where did you locate this aerial photo from?

A: The photo we retrieved was from the United States geological survey.

Q: Do those photos have a - - what - - what's called a - - a grid north - - do you understand what a grid north location is?

A: Uh, yeah, I understand what a grid north is. Uh, I do not know if these photos, I would have to check, but I do not recall them being georeferenced.

Q: Okay. There's other aerial photos that do have a georeference but these do not?

A: I - - I doubt these do. I'm not sure. I cannot say that definitively. But, yes, there are some photos that are georeferenced, yes.

Q: And just for the Court's edification, why is a georeference in a photo important?

A: Well it removes any degree of uncertainty as to the location of where it is on the face of the Earth.

Q: Okay. So if you don't have grid north, what do you as a surveyor do in order to locate with certainty where this photo is on the face of the Earth?

A: Well we have the advantage today to simply pull up a - - a program like Google Earth or an ArcGIS system, and you can generally line up structures and, you know, natural features like the creeks or the railroad bridges, the road intersections to be able to determine where that location is.

Q: And what degree of certainty can you determine where this wire fence remains is, uh, in this picture today?

A: I'd say a pretty high degree of certainty.

Q: Okay. Hang on, see if I have any more questions for you. I'm going to hand to you Defendant Justin Holder's Exhibit Seventeen. And I believe on the back page maybe a - - a description that you prepared for the wagon road.

A: Yes.

THE COURT: Mr. Holder, remind me what Seventeen is.

Q: Seventeen is the deed that I helped Deena…

THE COURT: The declaration?

Q: I helped Deena Holder prepare.

THE COURT: The declaration of the road. I understand.

Q: Yes. And did you - - did you create that picture that - - or what - - the surveyor…

THE COURT: Plat.

Q: …plat?

A: Uh, yes. It was done under my supervision but, yes.

Q: Okay. And was that in to relation of with the work you were doing for me that I had asked you to do to help survey this easement in the summer of 2020?

A: Yes, it was.

Q: Okay. Can you describe where that's at on the aerial photo, uh, maybe for the Court?

A: Sure. So this easement that's shown on here starts approximately here right opposite where this crossing was, runs down along the trees here and then out this way to this road.

THE COURT: So describing generally what he's already described on Plat 8293, west along the back of Stonecrest Lots 7, 8, 9, then turning generally south crossing over Lots 9 and 10 down to what we call the Young turn, and then out the Young panhandle to Dogstreet. Is that right?

A: That description's a little bit more than what is shown on here.

THE COURT: Okay. Where - - where did you…

A: This - - this kind of terminates here.

THE COURT: …stop on your description?

A: Right here.

THE COURT: At the - - I call that the Young turn. Okay, so that's the - - the back edge of Lot 14 of Stonecrest. Okay?

A: Correct, yes.

THE COURT: Why did you stop there?

A: Uh, that's where the description ended. It said then to - - to the road from, I believe…

THE COURT: Okay.

A: …from Keedy to…

THE COURT: Okay, I understand. Thank you.

A: Eakle's Mill, I believe it was.

THE COURT: Yeah.

Q: And will the Court take judicial notice that there appears to be a road in the picture? Or should I have the surveyor describe how he…

THE COURT: That's a decision for me to make. So, no, I will not take judicial notice that there appears to be a road in the picture. I'll decide whether I see a road in the picture.

Q: He doesn't need - - you don't need any of his testimony to…

THE COURT: I can see the picture.

Q: Okay.

THE COURT: I understand what the picture is.

Q: Okay. I'll grab those exhibits back from you.

THE COURT: Mr. Holder, as you're grabbing those…

Q: Yes, Your Honor.

THE COURT: The blue track map, what did we label that?

Q: Eleven.

THE COURT: Oh, because it was from yesterday.

Q: Yes.

THE COURT: Yeah, okay. Up here I have Justin Holder Twenty-nine just laying up on the bench, and I'm not sure…

Q: That is the NN520. It's already been in.

THE COURT: Twenty-nine is the NN520 deed?

Q: Yeah. I just had the - - the one. It was just offered…

THE COURT: You took that one out? Because unreadable.

Q: It was…

THE COURT: Okay, yeah. NN520, I got it.

Q: All right, I'll - - I'm through with my questioning.

END DIRECT EXAMINATION

THE COURT: Okay. Before we - - before we - - we're probably going to take a quick break. Before we do, I'd like to just do a little quick piece of housekeeping. Mr.

Clerk, what number are we up to for Justin Holder? Seventeen?

MR. CLERK: His next is Thirty-six.

THE COURT: His next will be Thirty-six?

MR. CLERK: Correct.

THE COURT: Okay. Mr. Clerk, can I do some Court exhibits? May I have a tag One and Two? Folks, here's what I'm going to do, I think the big picture on the board there of the overhead shot from 1960 geological survey, I don't think that's marked because I think a smaller one is marked. I'd like to just mark that as a demonstrative exhibit. I'll call it Court Exhibit One. I have a smaller version of the blue track map that sort of goes right into the - - the properties that we're talking about, and I'd like to call that Court Number Two for demonstrative purposes. Okay? So that's what we'll do, One and Two.

(Court's Exhibit Nos. 1 & 2 Marked for Identification)

THE COURT: All right, counsel, how about a five-minute break?

MS. PEEPLES: Yes.

THE COURT: Okay. Mr. Nagel, we're going to take a quick break.

A: Okay.

THE COURT: Can you just stick around? Please use the restroom if you need to. You're still under oath. Don't talk to anyone during the break. Okay?

A: Okay.

THE COURT: All right, and then we'll begin with cross-examination. We'll take five minutes.

(Whereupon this matter went into recess from 2:32 p. m. until 2:41 p. m.)

MR. KLINE: Your Honor, can I just ask one more question before we get started?

THE COURT: Sure.

MR. KLINE: He was looking at the last exhibit. It was a Deena Holder exhibit with his certificate on the back of it. What was that exhibit number?

MR. PEMBROKE: I think it was Seventeen.

MR. KLINE: Seventeen?

MR. PEMBROKE: I believe.

MR. KLINE: Deena Exhibit Holder Seventeen?

THE COURT: It's the Declaration of Easement…

MR. KLINE: With the picture on - - yes.

THE COURT: That Deena Holder filed that we discussed today as to who drafted it.

MR. HOLDER: But it's mine because I - - I put it in.

MR. KLINE: That…

THE COURT: Yeah it was Justin Holder Seventeen

probably.

MR. KLINE: Thank you.

THE COURT: Yeah. Okay, we're back on the record then.

MR. CLERK: You want to tell me again what you want marked as Court One and Two. But we don't need to do that right now.

THE COURT: No, it was the little blue one. Make that One or Two, I don't care. Court Number One will be the smaller version of the track map, the blue one. That - - that's one. And then Number Two will be the larger picture that's still over on the easel, the 1966 geo- it's the picture that's clipped.

MR. CLERK: Oh, large aerial.

THE COURT: You know what I mean? Yeah, the aerial. Okay. Mr. Pembroke, cross-examination if you're ready.

MR. PEMBROKE: Yes, Your Honor. Thank you.

THE COURT: Thank you, sir.

CROSS-EXAMINATION

By Mr. Pembroke:

Q: Good afternoon.

A: Good afternoon.

Q: Mr. Nagel, let me show you what's been marked and admitted as Defendant's Exhibit Seventeen. You spoke about this a few moments ago.

A: Yeah.
Q: Turning to the page that has your plat on it.
A: Yes.
Q: Do you recognize that?
A: I do.
Q: And you did - - you did do the plat and you signed the certificate?
A: Correct.
Q: Okay. I'm not sure how to - - so the Court can see.
THE COURT: I know what - - I know what it looks like. Go ahead.
Q: All right. Just so that I'm clear about this…
A: Uh-huh.
Q: Will you explain what this dark line is running along this edge of Stonecrest?
THE COURT: And that would be the back edge of Stonecrest Lots 7 through 9, I think.
Q: Yes, sir. What does that represent?
A: That's to depict the location of the access easement as described in the WMCKK6, folio 363.
Q: Or is that the 1872 deed?
A: Uh, yeah, I'm not sure of the date. I'd have to look and see, but that sounds about right.
Q: Okay. And can you tell me what the other black

line is that runs off of - - off of that line or at the end of that line?

A: I believe that's a portion of the same description from that same access easement.

Q: Okay. Now it stops at the corner of Lot 13 and 14?

A: It's just 14, I believe.

Q: I'm sorry. I was reading it the wrong way.

THE COURT: It's okay.

Q: Lot - - it stops at the edge of Lot 14.

A: Correct.

Q: Okay, your line stops there?

A: Yes.

Q: Why does your line stop there?

A: That's where the description ends. It calls for to the road from Keedy to, I cannot remember exactly the description, but it was to the road that was from Keedy to - - or some other party. I don't know if it was Eakle's Mill or whatever it was.

Q: Okay, now let me show you what has been marked as Plaintiff's Exhibit Three. I'm sure you've seen this one as well.

A: Yes.

Q: Okay, depicted on this plat, for the record is Plat 2499, the second line, it runs behind Lots, good

grief, Lots 10 to 14.

A: Uh-huh.

Q: Is that the same line that's depicted on this edge?

A: I'm sorry, I cannot see from…

Q: That's okay.

A: Which line are you pointing to?

Q: This line right here.

A: That's the (inaudible) line over here.

Q: Okay.

A: It's - - it's the southern edge of that easement is along that line.

Q: All right. And this also stops at the same point as it does on your survey?

A: Yes.

Q: So there is the right of way, or whatever it is, the access way, does not extend, if you take a left if you were driving it or walking it, does not extend down this portion of the property?

A: Not as…

THE COURT: Indicating the panhandle.

A: Not as described in that document, no. The - - the W- the old deed, yes.

Q: Okay. Now if you recall, the description of the wagon road that's contained in the 1872 deed, does it

contain a width?

A: It does not.

Q: Then let me ask you, how is it you're able to locate the route on a survey or on a plat if the width is unknown?

A: Because it gives you bearings and distances for the edge of the easement and then gives a description from there down to the road across the property.

Q: And from that you're able to determine the width?

A: Uh, no. I did not determine the width on that. I just determined the location of the easement.

Q: So is it fair to say you cannot give us a professional opinion on how wide it is?

A: That is correct.

Q: Is it fair to say that based upon the descriptions contained in the 1872 deed, the wagon road is a private road?

MS. PEEPLES: Objection.

MR. KLINE: Objection.

THE COURT: What's the objection?

MR. KLINE: Defining a private road. Isn't that the Court determination?

THE COURT: Well that's - - if - - if you want him to look at - - the objection's sustained. If you want him to define it, then give him the description, and he can read

me the description.

Q: When - - when you were doing your survey, you did title work as well?

A: Yes.

Q: Okay. Did you do title work on the Cost and the Holder chain of title?

A: I did.

Q: Did you find that there was any recorded easement in favor of the Cost or the Holder chains?

A: Can you define title work?

Q: I'm sorry?

A: Can you define title work?

Q: Well in other words…

A: By that…

Q: You researched the deeds.

A: Yes, we did look at the deeds.

Q: And you looked - - you looked into the ownership and the transfers and conveyances of the property.

A: Mm-hm.

Q: Okay. And you did that for both the Cost chain and the Holder chain.

A: Correct.

Q: Okay. So you did - - you titled it back.

A: Yeah.

Q: At least - - at least to 1872.

A: Yes.

Q: Okay.

A: You know, we weren't looking - - when you say title work, what I'm used to seeing from like a title commitment, we didn't look for easements specifically. We mostly just looked for the boundary line determination. Uh, you know, a lot of the other rights that go along with a property are, you know, if we run across them, we'll show them if it's just a boundary survey. But generally that's not considered part of what a surveyor would do. So to answer your question, we did not specifically look for easements that may have affected both chains in that complete chain of title.

Q: Okay, even though you didn't look for them…

A: Mm-hm.

Q: …did you find any recorded easements in either of those chains?

A: Uh, we did, yes.

Q: And do you know - - in those two chains, you found recorded - - record- I'm sorry. Did you find this easement recorded in those two chains?

A: Uh, for the Cost and for which one? I'm sorry, the Keedy?

Q: Holder.

A: Holder? Uh…

Q: Chains.

A: No, I don't believe we did.

Q: And based on where you say the line of Stonecrest is, does the - - does the route of the wagon road encroach upon any of the lots in Stonecrest?

A: Yes, it does.

Q: And which lots are those?

A: It would be Lot 9 and part of Lot 10.

Q: And can you tell how far the encroachment would be?

A: Not without knowing what the width would be.

Q: Thank you. No further questions.

END CROSS-EXAMINATION

THE COURT: Any re-direct based on the cross-examination?

MR. HOLDER: Yes.

RE-DIRECT EXAMINATION

By Mr. Holder:

Q: Do you remember a time when you were doing the work for me, we discussed what the width of the wagon road would be?

A: Yes.

Q: And did - - did you advise me that it would be up to the Court what the width of a wagon road would be?

A: Yeah, I said someone else would have to determine

that. Yeah, I could not do that.

Q: Thank you.

END RE-DIRECT EXAMINATION

THE COURT: Thank you for your testimony today. It's very helpful. I appreciate it, Mr. Nagel.

A: Is that it?

THE COURT: Yes, sir.

A: All right, thank you very much.

THE COURT: You're - - you're free to leave.

END TESTIMONY OF GEORGE E. NAGEL

THE COURT: Next witness? Or if that's the last witness, let me know.

MR. HOLDER: That - - that's the last witness, sir.

THE COURT: Is that the last witness for the defense?

MR. HOLDER: Yes, sir, Your Honor.

THE COURT: Mr. Kline?

MR. KLINE: On behalf of Uncle Eddies - - Uncle Eddies, yes, sir.

THE COURT: Thank you, Mr. Kline. Mr. Holder, that's the last witness for Justin Holder?

MR. HOLDER: Yes, Your Honor.

THE COURT: Ms. Peeples, is that the witness for Deena Holder?

MS. PEEPLES: Yes, Your Honor.

THE COURT: Okay, so the defense rests?

MS. PEEPLES: Yes.

THE COURT: Very well. Mr. Pembroke, any rebuttal?

MR. PEMBROKE: Yes, Your Honor.

THE COURT: Who would you like to call?

MR. PEMBROKE: Call Christopher Joliet.

THE COURT: All right, Mr. Joliet. Mr. Pembroke, give me just a second. I need to look for something here in my notes.

MR. PEMBROKE: Certainly, Your Honor.

THE COURT: Mr. Joliet, let's be sworn again.

TESTIMONY OF CHRISTOPHER JOLIET, ESQ.

CHRISTOPHER JOLIET, ESQ., a witness, produced on call by the Plaintiff, first having been duly sworn according to law, was examined and testified as follows:

THE COURT: Have a seat, sir. Mr. Joliet was admitted as an expert in this court yesterday. He's admitted as well today unless there's any objection. Hearing no objection, he is admitted. Mr. Pembroke.

DIRECT EXAMINATION

By Mr. Pembroke:

Q: Thank you, Your Honor. If I might have just a moment?

THE COURT: Oh, take your time.

Q: Good afternoon, Mr. Joliet. You were present in the courtroom when Mr. Nagel testified?

A: Yes.

Q: And did you hear him say that in his professional opinion, part of Plaintiff's Exhibit Three, which is Plat 2499, is in error?

MS. PEEPLES: Objection.

THE COURT: What's the objection?

MS. PEEPLES: The objection is, uh, Mr. Joliet has testified previously that he's not a surveyor. Mr. Joliet is a title person and reviewed the plats and the deeds and - - and hasn't the experience to go out to make the field determination as to whether the plats are in error.

THE COURT: Overruled. You may renew your objection on a different question. But the question was simply, did he hear the testimony.

MS. PEEPLES: Okay.

A: Yes, I did.

Q: And you ran the title chains?

A: Yes, I did.

Q: In this matter.

A: I ran all three, Holders, uh, Stonecrest, Dorsey, Cost, whatever, and Young.

Q: And those deeds contain metes and bounds and descriptions of property?

A: Yeah, yes.

Q: And based on your research and your review of the

descriptions of the property in the chain of titles, do you believe - - do you agree with Mr. Nagel that there's an error on…

MS. PEEPLES: Objection.

Q: …this plat?

A: I don't.

THE COURT: Hang on.

Q: Hold on.

THE COURT: Hang on.

A: Okay.

THE COURT: The objection, what…

MS. PEEPLES: Same objection as before, Your Honor. I don't think by reviewing title of metes and bounds description in deeds alone can give rise to the opinion that there's a description unless Mr. Joliet actually went out there and surveyed the property.

THE COURT: A point that you can bring up on cross-examination. Overruled.

Q: You may answer.

A: Well…

Q: Is there a mistake on the plat?

A: Not from Fred Frederick's description. It's exactly the same as what's on the plat.

Q: And you also had the opportunity you - - in your search of the titles…

A: Mm-hm.
Q: The chain of title. Mr. Holder claims to now own Parcel 3.
A: I heard that.
Q: Okay. It is by virtue of the quitclaim deeds from Mr. Castle and Ms. Butts.
A: Yes.
Q: In your research, did you find those deeds?
A: Yes.
Q: And did you research those and how they fit into the chain of title in this property?
A: I'm not sure I know what you mean.
Q: Okay.
A: They're quitclaim deeds.
Q: Yeah. But they turned up in your research?
A: Yes.
Q: Do you have an opinion as to whether or not at the time that Ms. Butts conveyed or executed the quitclaim deed to Mr. Holder, she still had any right, title or interest in the property she was attempting to convey?
A: No, because she conveyed it to, uh, the Cost chain. I forget who she conveyed to. So she was out of it at that point.
Q: Do you have an opinion as to whether or not Mr. Castle had any right, title or interest to the property

that he attempted to convey to Mr. Holder by a quitclaim deed?

A: Yes.

Q: What is your opinion?

A: He didn't have title to convey because he'd already lost it by Mr. Young's adverse possession, which he acknowledged on the plat.

Q: Referring to Plat 2499?

A: Well he acknowledged on his plat of Stonecrest that specifically…

Q: 8292 and 93?

A: Right. And that specifically refers to the Fred Frederick's plat and holds the exact same line.

Q: You heard Mr. Nagel describe what he believed was the - - we'll call it, in this case, we call it the Butts' Parcel 3?

A: Okay.

Q: Okay? And comparing the Butts' Parcel 3 to Young's Parcel 3…

A: Okay.

Q: You heard him testify about that?

A: Okay.

Q: Okay. And I believe he indicated that his opinion was that Young's Parcel 3 is completely contained in Butts' Parcel 3.

A: That's correct.
Q: Okay. Do you agree with that opinion?
A: I believe it's probably correct, yeah.
Q: Okay, all right. You heard his testimony with respect to this 15 square foot piece of - - piece of land.
A: Yes, I did.
Q: Okay, uh, that apparently was just left out or, quote, "Escaped," I believe the term was.
A: Yes, I did.
Q: Okay. In your research with respect to the chains of title in this matter, do you agree that there is a proximate 15 square foot piece of property that has been left out or escaped?
A: If there…
MS. PEEPLES: Objection.
A: If there is…
THE COURT: Overruled.
A: …it's not in what's being claimed for Parcel 3.
Q: I'm sorry?
A: If there is, it's not contained within what's being claimed for Parcel 3.
Q: On the Young's Parcel 3?
A: I'm sorry, yes, Young's Parcel 3. It's what we call de minimis. In parcels this size, it wouldn't - - wouldn't matter.

Q: Thank you. No further questions.

END DIRECT EXAMINATION

THE COURT: Cross-examination?

CROSS-EXAMINATION

By Mr. Holder:

Q: Mr. - - Mr. Joliet, you said earlier in your testimony, Mr. Young's adverse possession would have ripened in 2008. Is that accurate?

MR. PEMBROKE: Objection, exceeds the scope of my rebuttal.

Q: Gary Castle, you said - - you talked about Gary Castle and the Stonecrest plat.

THE COURT: Hang on. He just opined that Mr. Holder's deed from Castle was invalid because Mr. Castle did not have title because he already lost it by adverse possession to Young, and by his acknowledgement which on a plat that he drafted by Castle and Associates, that he did not - - that Castle did not own what we have been calling Young Parcel 3. And so your question is what?

Q: Earlier you testified that the adverse possession of Young ripened in 2008. And the reason he - - he said that the plat acknowledged it was because Young had already adversely possessed it. The plat was done in 2005. I was trying to establish that's not accurate.

THE COURT: 8292 was done in 2005?

Q: I believe so. It was 829- are you aware of…
A: It was done around there. And, no, it hadn't…
THE COURT: 20-…
A: …ripened at that time. But it ripened after that. He never challenged it.
THE COURT: The objection's overruled.
A: Because Young was never challenged.
MR. PEMBROKE: Thank you.
Q: Okay.
THE COURT: So even before it ripened, Castle was acknowledging it.
Q: If - - if that's what the Court determines the plat…
THE COURT: But I'm just saying, that's what you just - - the difference in dates, that's what 8292 shows. Okay.
Q: I'm just saying at the time it had…
THE COURT: Understand.
Q: Okay. And you said 15 square foot would be de - de minimal is that - - was that the…
A: De minimis.
Q: De minimis? Is there a certain, in - - in your experience in title, is there a certain point where somebody just doesn't deserve to own property? Is there a certain amount of property that they just, "Look, we don't

care if it's all you own, you just don't get it, it's not worth it?"

A: I'm not sure what you mean. But in a parcel this size, people don't really care about, you know, a few feet, a few square feet. But nonetheless, Young's plat doesn't contain that square footage. He's not claimed it. So where is - - I don't think anyone cares.

Q: If - - if - - if I do have 15 square foot, how would I get there? How would I get to it? How would I access it?

A: That would be your problem.

Q: Okay. That's all the questions I have.

A: Okay.

END CROSS-EXAMINATION

THE COURT: Hang on, Mr. Joliet. Anything else?

MR. PEMBROKE: No, Your Honor.

THE COURT: Okay, thank you.

A: Thank you.

END TESTIMONY OF CHRISTOPHER JOLIET, ESQ.

THE COURT: Any other rebuttal witnesses, Mr. Pembroke?

MR. PEMBROKE: No, Your Honor.

THE COURT: Very well. Okay, we are at 5 after 3:00. It will be time for closing arguments. But before we do that, I want to give counsel an opportunity to sort of

gather themselves and - - and think about the case. And then we'll come back and begin closing arguments. So why don't we take, you know, a good ten minutes, fifteen minutes and prepare yourselves for closing arguments. Okay?

MR. PEMBROKE: Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon this matter went into recess from 3:04 p. m. until 3:23 p. m.)

THE COURT: Everybody have a seat please. Okay, back on the record again for Jeffery Young versus Justin Holder, et al., C-21-CV-20-371. Is counsel ready for closing arguments?

MR. PEMBROKE: Yes, Your Honor.

THE COURT: Mr. Pembroke, you'll be heard.

MR. PEMBROKE: Would you prefer that I remain at the table or at the podium?

THE COURT: Do whatever you want.

MR. PEMBROKE: I think I'll use the podium.

THE COURT: Very well.

MR. PEMBROKE: Great minds.

MR. KLINE: Steal my thunder.

MR. PEMROKE: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. PEMBROKE: Your Honor, obviously this matter is an

action for quiet title. I believe from the Plaintiff's perspective there are two issues or two questions that have been presented during the course of these proceedings. Question number one, does Mr. Young own the property, and the property we're really talking about is Parcel - - is Young Parcel 3, by adverse possession? And issue number two, do the Defendants have a right of access over Young Parcel 3 of the subject property? We believe the evidence has answered questioned no, I'm sorry, question one, no. And the answer to question two - - strike that. Let's try it again. The answer to question one is yes. The answer to question two is no.

Dealing with the issue of adverse possession first, the law requires certain elements be met for adverse possession. I'm going to try to be brief. A judge is presumed to know the law, and it's quite obvious to all of us here, you know the law. But to obtain property by adverse possession, the possession must by actual, open, notorious, exclusive, hostile, under color of title or right, continuous and uninterrupted for the statutory period, which is twenty years. Oftentimes, the first three elements, actual, open and notorious are lumped together because they do overlap. The evidence shows that Mr. Young purchased the property by deed from the Wicklines in 1988, bought all three parcels including

Young Parcel 3 at that time. The testimony was that he immediately moved onto the property as a whole. And since the purchase, he spent several years improving the residence, which was located on Parcel 1. He mowed the grass and other parcels including Parcel 1 and 3, trimmed the bushes and the trees, maintained the property generally in a manner conspicuous for all to see, not hiding his presence or his - - or his activities on the land. There were several survey plats created and recorded in Land Records over the years that acknowledged that he was the owner of the subject property. And we've introduced those here, particularly Plat 2499, and the Stonecrest Plats, specifically, 8292 and 8293. And they acknowledged Mr. Young as the owner of this property, particularly Parcel 3, and often referred to plats to the Plat 2499 with Mr. Young as being designated as the owner. That also includes the tax map that was introduced, which refers to Plat 2499 along the property line, which also would by reference acknowledge him as the owner. He testified that he paid the taxes on all three parcels since 1988. And nobody has challenged his ownership or right to be on the property from the time he purchased it in 1988 until Mr. Holder came along in the, I guess, late spring or early summer of 2020.

Also with respect to the property, he did get an

overlap deed from Jennifer Butts, a quitclaim deed, at the end of Parcel - - well for Parcel 2, which is at the end of the panhandle down near Dogstreet Road. After moving onto the property, he shortly thereafter he - - he posted approximately twenty-five no trespassing signs around the perimeter of the property. He testified that on occasion as was necessary, he replaced those signs when they were either vandalized or were faded and dilapidated due to exposure to the elements. Both he and his stepson testified that there are still approximately twenty-five of those signs posted around the perimeter to this day.

With respect to exclusiveness, he held the property out for himself, not for anybody else, by virtue of his presence there and by virtue of the fact that he had a deed where he believed the property had been conveyed to him. He ejected trespassers off the property when he would catch them. He told people generally, including family members, he was the owner of the property sometimes along with his wife, who owned the property at various periods since he acquired it in 1988. He maintained and he used the property as he desired it to be used and maintained.

Specifically with respect to Parcel Number 3, he testified that for a period of years he mowed the property. He trimmed the brush and the underbrush, kept

the trees at bay and, thereafter, decided that he wanted it to return to a natural state. One, because he said he had other priorities with respect to the property and just because that's what he decided he wanted to do. There was testimony that on occasion, people would come onto the property unbeknownst to Mr. Young and uninvited by Mr. Young. When used for purposes of adverse possession, exclusive possession does not require that it be absolutely exclusive. In *Blickenstaff versus Bromley*, 243 Maryland, 164, 220 A. 2d 558, 1966, the Court said the possession must be of a type which would characterize an owner's use. And I would submit to you that the evidence indicates that that is exactly the type of use that Mr. Young used the property for. In *Zimmerman versus Summers*, 24 Maryland App., 100, 330 A. 2d 722, 1975, they indicated that the claim of right must be - - is not the use itself that must be exclusive, but it must be against the right of the community at large. And again, by the measures that he has taken that was testified to, and as I just described, I believe that he has met the requirement that his possession was exclusive. Must be hostile. That means that he has to possess the property without permission of the, quote, "True or real owner." He testified that he never, at least he testified in trial, he never got or asked for permission from anybody,

including Mr. Castle or Ms. Butts, for permission to be on or use the property because he believed that he had good title to the property due to, first, the 1988 deed, and then the 1993, I'll call it, overlap deed. Possession can be hostile under the law even when the claimant mistakenly believes that the land is his or her own. And I cite *Bishop versus Stackus*, 206 Maryland, 493, 112 A. 2d 472, 1955. How was his possession hostile under the meaning of the law? Again, living on the property, using the property for his own purposes, payment of property taxes, restoring the property, which was vacant and in poor repair when he first acquired the property, maintaining the property and keeping others off of the property.

The next element under color of title. He had the deed from the Wicklines, which included Parcel 3. Received the deed, quitclaim deed to Par- Parcel 2 from Ms. Butts. His ownership was acknowledged in Plat 2499. I'll call it the Wickline plat. It was also acknowledged in the Stonecrest Plats 8292 and 8293. So he was possessing the property under color of title. Also, no one challenged his - - his ownership from the time he purchased it, as I said, 1988, until 2020, when Mr. Holder asserted a claim to having access to a right of way at that time over the property.

Continuous and uninterrupted, period required is

twenty years. Mr. Young has been on the property for approximately thirty-four years at this point from 1988 until the present day. He has actually occupied the property, although that's not necessarily a legal requirement to have continuous and uninterrupted possession of the property. But he's lived there. His family has lived there for a period of far in excess of the twenty years. And he did take possession of the property under a claim of right, which indicates that his possession, his adverse possession, starts from that period of time, which would have been August of 1988.

We believe that his adverse possession has ripened before Mr. Holder received either the - - either the quitclaim deeds from the Jennifer Butts or Gary Castle in the quitclaim deeds. As Mr. Joliet testified, it was his expert opinion that by the time those deeds were executed, both Ms. Butts and Mr. Castle had been divested of all of their right title and interest in Parcel 3. So it's our position, and I believe the evidence has demonstrated, Mr. Young has acquired the property by adverse possession.

All right, the right of way easement right of access. Mr. Joliet testified that part - - that the wagon road was more in the nature of a license than an easement. His testimony was that the 1872 deed grants the use of a wagon road even though the terminology of right of way language

was commonly used during the same period of time. The words, "right of way," did not appear in the chain of title for forty-two years when it was inserted into the chain of the dominant property, not the servient property. And there was no testimony specifically that indicated that the grant was changed in the chain of the - - of the servient property. So forty-two years later, it went from use of to use of and right of way over without any explanation and without any increase in the grant involving the servient estate. The width of the wagon road was not specified. In all of the deeds and all the chains, the width of the wagon road has never been described in an instrument of title. I would argue that that puts it more in, as Mr. Joliet testified, more in the nature of a license than an easement because it is non-specific in terms of its length and in terms of its location. Not in terms of its length, excuse me, in terms of its width and in terms of its actual location. I think it's awful hard to really pinpoint an object on land if you don't know how wide it is. And most times, easements are required to be more specific than the description of a wagon road. The wagon road also stopped at Keedy's Road, which did not go - - which - - which and did not go to the County road. So as Mr. Nagle testified, the wagon road basically runs down this portion here and stops at what is

our, Mr. Young's Parcel 1 by the panhandle. It does not go down the panhandle, does not cross over Parcel 2 of Mr. Young's property and, therefore, does not go to Dogstreet. So essentially it goes nowhere by its own terms and descriptions in the deeds.

A - - whether it's a license or whether it's an easement can be terminated in a variety of ways. It can be terminated by an instrument of record. There's no indication that that occurred here except by inference when Mr. - - when the Hutzells gave the declaration indicating that ingress and egress to 25 and 28 Antietam Drive would henceforth be over Antietam Drive. The fact that there was non-use of the wagon road by the owners of the dominant estate for many, many decades, no one came into court and testified that this area was used as a wagon road or a road or regularly transgressed over by individuals. There was testimony that there were people that would come onto the property and party. Mr. Holder testified when he was younger, he would cross over the property on occasion. Mr. Young testified that when he found people on the property, Parcel 3, that were not invited, not supposed to be there, he basically kicked them off. I believe one occasion, Mr. Holder testified that he also got kicked off the property once by Mr. Holder. The wagon road area was overgrown. Testimony by

Mr. Young and by Jesse Downs was that it was overgrown with brush and mature trees, had not been used for a road. And at one point in time, the reference to the wagon road is omitted from the chain of title for that where it had been for approximately 100 years. The area was purposely allowed by Mr. Young to be overgrown and returned to nature. He testified that it was virtually impassible when he purchased the property. Mr. Joliet testified that back when he walked the property a year and a half, two years ago approximately, it was pretty much the same. He said he had difficulty walking over the property because of the condition it was in. Again, we had the declaration saying that ingress and egress would be over Antietam Drive. And I think that these things indicate that there was an intent and an actual abandonment of this easement, right of way, whatever the Court determines, to use it. Also, there is no mention of the wagon road or easement in the Holder chain for approximately a hundred years, which I think is - - is - - I believe that that is significant.

Easement can also be terminated by adverse possession of the servient estate. The authority for that, I would say is *Mullen versus Hochman*, H-O-C-H-M-A-N, 157 Maryland, 213, 145 A. 554. It's a 1929 case. An easement, and I would argue also a license if the Court so finds that it's a license, can be lost by adverse possession of the

servient estate. If the use of the property is inconsistent with the existence of the easement, that will tend to extinguish it. We have here a fact that it is inconsistent with a road. It was not used as a road. It was not kept clear as a road. I think from the inception the fact that this so-called road, the width of this road was never determined, I think is a problem that's always existed in terms of how you're gonna use it. Obviously, if you have 30-foot-wide path or road, you can use that in different ways than you could if it was 10 foot or 12 foot or 3 feet. So I think that that is a - - I think that's a fundamental problem in determining what the use of the road was supposed to be. We don't have a description as to what a wagon was in terms of 1872. We can picture in our minds what it might be. But I am sure that there are all sizes and shapes and types of wagons for different purposes even back then. There's no indication as to what type of wagon this road was intended to support. And it hasn't been used for that in many, many, many years. And the fact that now it has been - - it's grown up and during my client's possession of the property for the first twenty years, it was allowed to grow up after a period of time and was never used as a road for anything or for anybody in any purpose, I believe that that under the law extinguishes the - - the grant whether it was a license or

whether it was a right of way.

Further, I think that it's significant that it - - by its own definition and by its own terms, it stops before it reaches any type of public road. So what was the intent of - - of the original grantor? At this point, Your Honor, we don't know. We have to - - we have to speculate as to what that would be.

My final argument with respect to that would be laches. And as Mr. Joliet indicated, Stonecrest was developed. The owners of Stonecrest did not - - were the owners of the property, the servient estate did not object when Stonecrest was being placed. The fact that nobody in fact that we know of objected over all these years to Mr. Young possessing, using the estate, claiming it as his own, holding it out to the world at large as his own. Nobody complained about that. And I don't believe that if the argument, and I'm supposing here, if the argument from the defense is, "Well the properties of 25 and 28 Antietam Drive need this access because of a water and sewer issue," I think Mr. Hull testified credibly from Keedysville that the water and sewer lines have been installed and hooked - - not hooked up, but installed and they're ready - - they're ready to - - to be turned on. The problem is from his perspective, he testified that the certain fees and expenses or perhaps inspection fees have

not been paid. So it's a simple matter to clear - - to take care of that by simply paying the requirement governmental fees to get water and sewer hook-up. So I believe that the evidence has demonstrated, one, that Mr. Young has obtained possession of Parcel 3 by adverse possession and, two, that there is no longer an access way over the wagon road that - - that first appears in the chains of title in 1872. Thank you.

THE COURT: Thank you, Mr. Pembroke. Mr. Kline, for Uncle Eddies.

MR. KLINE: I believe it's Mr. Kline for all the Defendants, Your Honor.

THE COURT: Oh, that's fine. Okay, thank you. I appreciate that.

MR. KLINE: One moment, Your Honor.

THE COURT: I'm fine.

MR. KLINE: Good afternoon, again.

THE COURT: Yes, sir.

MR. KLINE: On behalf of all three Defendants, first, what I would like to, and I'm sure the Court's heard a significant amount, I'm going to burden the Court with some more deed, deeds, Liber and folios just to go through the history of the different parcels. So first and foremost, 127, on tax map 127 was transferred or conveyed to Uncle Eddies, and all these deeds are in the records.

I don't have the exhibit numbers. 5726 is the Liber, 224 is the folio. It was subsequently 127 was subsequently deeded to Deena Holder, one of the Defendants, by virtue of deed at 5827 370, folio 37. Deena Holder purchased on her own Parcel 412 to left and that's at 5824, folio 352. And Deena Holder after being granted title on 127, separated 127 by deed 6070, folio 197, in the Parcel 414. Those are the Defendants' record title to get to this point. The wagon road, which we've heard a lot of, and not holding myself but generally describing, continues, I believe, 9 - - Lots 9 and 10 of Stonecrest and down to 14. And as Mr. Pembroke indicates, stops at 14. That's been the testimony. The wagon road's at WMCKK6 363.

THE COURT: Say that again.

MR. KLINE: WMC-Cat-K-Kilo-K-Kilo-6, folio 363. It is also in expert Clabaugh's documents as well, the reference number. Justin Holder purchased Parcel 3.

THE COURT: Young Parcel…

MR. KLINE: Excuse me?

THE COURT: Parcel 3 as shown on 2499?

MR. KLINE: The Wickline deed, Plaintiff's Three.

THE COURT: Okay.

MR. KLINE: By virtue of - - he purchased one part of it, 6370, folio 249, from Stonecrest. And then the quitclaim deed from Butts to him at 6414, 219. Again,

those were in there. And that I'm gonna call - - obviously we're not worried about Parcel 2, we're only worried about Parcel 3, the stinger, if you will. The testimony - - I think it's important, first of all, for the Court, and while I appreciate Mr. Pembroke indicating that Mr. Young has exclusively with hostile intentions exercised his dominion over the property. But the testimony was or came out that Parcel 3, both from Mr. Downs, and I believe Mr. Young, this falls off a cliff and falls some 85 or 100 feet down. And I believe when Mr. Downs testified and he was shown Justin Holder's Plaintiff's Six, that's the picture of what was mowed down Parcel 3, on direct - - or cross, Mr. Downs indicated to the right of that falls down. And then there was a question about whether or not, you know, he said he hunted. And there was a question, "Well I could have hunted up there," although he said he didn't and been able to shoot down, which would have been, I guess, advantageous for a hunter at whatever game he's shooting. Because of - - because of that terrain up there, and if you remember when Mr. Young testified, in 1988 when he bought the house, with all due respect to Mr. Young, was dilapidated in the need of some work that took three to four years. I don't know the condition. We don't have a picture of it. But the son testified he lived in a camper

while he renovated it. So while I'm sure it's a lovely house now and it's wonderful, at the time for three or four years, it really wasn't livable or else there wouldn't have been the need for the camper. I'm guessing. He had other problems arguably besides this stretch of Parcel 3. When he got there, he - - Mr. Young's testimony was it was overgrown. When Jesse Downs testified, in 1989, the time he remembered a year later when he was seven, eight or nine, however old he was, he indicted there was an old road growed up. He did indicate some mature trees. But at the same time, he indicated a width much larger than anybody else. He said 14 or 18 inches. I think everybody else said 5 or 6. Because Mr. Holder testified he had pincher on a bobcat that was portable. The position of the Defendants is, is that Mr. Holder's interest in Parcel 3 is achieved because there is a gap due to the inconsistencies in the deed where the plat's drawn as established by Mr. Nagel. So Mr. Nagel drew the picture, which the Court had him draw and then faded in the information. Mr. Nagel's information or his testimony was that was 26 feet wide by 400 and change length. The plat, Plaintiff's Three, that everyone wants to - - that Mr. Joliet blesses or thinks because it's on the plat, I would argue it doesn't make it absolutely correct, indicates that the width is 12 - - 12.2 feet. So per the

testimony from Mr. Nagel and per the plat, there is approximately a 12 to 14-foot sliver. Mr. Nagel's testimony was, I believe, Mr. Pembroke I'm sure on his rebuttal will correct it, was that it's on the interior onto Stonecrest, and he said that as well as to Lots 9 and 10 regarding the wagon road. He said it encroached. The question was, Mr. Pembroke asked Mr. Nagel on cross, "Does it encroach or not?" He said, "On 9 and 10, it does." So it's on the interior of 9 and 10. So the wagon road came, using Plaintiff's 10, starts here around the top of Lot 9 on the interior. Now I am not conceding the dotted lines on Plaintiff's 10.

THE COURT: It's just a tax map.

MR. KLINE: Just - - just exactly right. But I didn't want to suggest that I'm conceding those to be appropriate length. But Mr. Nagel's testimony is, is that it's on the interior of 9 and 10. And then I would argue to the Court that it continues on the interior. So actually, the wagon road is on not Mr. Young's property, but on the interior of Stonecrest. And if so, would - - would be in addition to, because remember, Mr. Holder purchased from Stonecrest, would be in addition to whatever this gap or swath, vertical swath would be, although admittedly thin, and obviously we have the 15 square feet at the top that no one seems to be arguing about, but apparently it's 15

feet. Mr. Joliet would have - - indicate, "It's de minimis and, therefore, we're not gonna worry about." I would suggest if own 15 square feet in Manhattan, it would be worth a lot. But out in Keedysville, perhaps it's not. I don't know Keedysville. But if it was in New York City, 15 square feet, I put three bedrooms and rent them out for whatever.

So we believe that Justin Holder is successful on the adverse possession because of the lines and the gap and his purchase of Parcel 3 from Stonecrest and Butts. Secondly, we do not believe that Mr. Young can adversely possess the easement. Now while I appreciate Mr. Pembroke's citing of a case, it was an older case. I would suggest the Court may want to look at a newer case that deals with adverse possession of easements, and that's *Purnell versus Beard and Bone*, 203 Maryland App., 495. It's a 2012 case, which indicates somewhat similar to what Mr. Pembroke said, but indicates that, "In order to adversely possess an easement," Mr. Young in this case, "Would have to prove by a preponderance of the evidence that it was," Mr. Young's actions, "Were sufficiently hostile and inconsistent with the permitted use of the easement." And that's at page 528. Regarding adverse possession, and I agree to a certain extent with Mr. Pembroke, we're here for two different issues, adverse

possession and adverse possession of the easement. So we agree somewhat on that. The facts in the case, which obviously Your Honor is the sole determinate of rule or the sole determiner of the facts, we have an overgrown property per Mr. Young. We have an old road per Mr. Young that was - - that he indicated in his deposition and that's a Deena Holder Exhibit Two is his deposition. And on page 33, when asked, Mr. Young indicates that he doesn't go up there because it's an old road. And that's Deena Holder Exhibit Two. As I indicated earlier, Jesse Downs indicated that it was an old road all growed up.

Other evidence regarding adverse possession and whether or not the different elements are met, we had testimony of a remnant of a fence. There was never really testimony that the fence was in place the whole time. There was testimony from a Stonecrest person that they had a privacy fence. But that would have been inside the property and not really the fence that kept the cattle in that was testified to had to be replaced over time. The testimony I remember was, was that the fence was maintained on and off determining whenever there was a problem from '88 to - - from 1988 to 2022. Similarly, the testimony from Mr. Young himself, my recollection was that he did not indicate that he maintained Parcel 3 from 1988 to 20- to today. And in fact, if the Court remembers, he

indicated that when the Stonecrest development started in '05, that at a certain point, he gave up because it was just trash coming, debris, whatever it was, coming onto the property, and he gave up and he wasn't going to chase it anymore. He wasn't gonna pick it up, and he let it go. I'm not saying he didn't go back later. I'm just saying it's not continuous. At one point, he let the trash and debris come onto the property. The property itself being as large as it is, and as Mr. Pembroke indicated, and as the Court remembers, Mr. Young testified approximately twenty or twenty-five signs were posted around the perimeter of the property. The Court remembers that eventually, and I remember during one of my questionings, that Mr. Young got so fed up with people coming up through Parcel 2 or up his lane to his house where he would make a right, and I believe Jesse Downs testified to this, that they put, I said chain link fence, and he said a…

THE COURT: Cable.

MR. KLINE: …line or a cable or whatever it was. But Mr. Young testified that after they put up the cable, he -- he said six signs were put down the lane. So if six signs are put down the lane, I'll round it up for the Court, that would leave approximately twenty signs to post on the remainder of the property. I think the Court can take judicial notice that this amount of acreage in Parcel

2 and the remaining Parcel 1, the panhandle, if you will, and the acreage in Parcel 3, to use Mr. Joliet's word, is de minimis as far as the acreage goes. 10.36 acres, I would say all 10 acres, if not more, is made up in this main multilateral tri- rectangle, if you will. If the Court were to Google how many linear feet does it take to encase 10 acres, it's 2,660 feet. Twenty signs over 2,660 feet is one every 130 feet, approximately.

THE COURT: Okay.

MR. KLINE: Twenty times 130. So every 40 yards, yeah, every 40 yards would be a sign. Every 40 yards would not tell the people to stay out, would not be hostile in a space that that's big. So while I appreciate he put up twenty signs, and that sounds like a lot, I have a small yard, twenty signs, that's - - I could spit on each one. But in 10 acres, it - - it's - - it's not appropriate to show hostility towards keeping people out.

As far as who he ejected, besides ejecting Mr. Holder, who was there with the Bobcat or the pincher, the partiers and the vandals were down in the lower area where the creek was, not on Parcel 3. There's no testimony that he found vandals up in 3. The only thing he found up in 3 was overgrown brush, mature trees and debris from the Stonecrest development. Mr. Joliet, if we believe Plaintiff's expert, I'm not saying he shouldn't be

believed, but Mr. Joliet's expert opinion is, is at a certain point in time, someone should take - - someone should take the affirmative act of filing something to put people on notice that they have extinguished a right. Mr. Pembroke makes the point that nobody did anything on our side as far as any of the Defendants go. However, Mr. Pembroke's client for - - for whatever reason in August 3, 1988, which is Uncle Eddies' Exhibit 3, which is Chris Joliet's letter to Jeffrey Young indicating he has a problem with his property, and the title report that came in, which is, the title report from Western Maryland Title Services to Barbara Coleman, at the time Mr. Young's girlfriend, signed by Mr. Campbell on behalf of Western Maryland Title, which is Justin Holder's Plaintiff's Seven, indicates on page 2, second paragraph under part 4, entitled, "Covenants, Restrictions, Right of Way and Other Matters," indicates, "The Land Records for Washington County, Maryland, do not disclose the identity of those persons who may have an interest or the right to use such farm, lane, nor do such records disclose what right, title and interest Mr. and Mrs. Reeder may have with respect to Parcels 2 and 3 recorded at 434, folio 776, one of the Land Records for Washington County." So while I appreciate Mr. Pembroke pointing the finger at the Defendants, Mr. Young, as Mr. Joliet testified, was able

to tack on Parcel 2 through tacking. Mr. Young was on notice in 1988 by virtue of Mr. Joliet's letter and by virtue of the title search he received from Western Maryland Title in 1988 that there were certain discrepancies with respect to the land that he had purchased. According to Mr. Joliet, if Mr. Young would have then before Mr. Holder or any of the Defendants because this was purchased well after the twenty-year ripening period, if it - - if it has ripened. I'm not - - I'm - - twenty years has gone by.

THE COURT: What was purchased? What was purchased?

MR. KLINE: I'm sorry. Adverse possession. He purchased the property in '88. I'm saying in 2008, before the Defendants come on the scene…

THE COURT: Mm-hm.

MR. KLINE: According to Mr. Joliet, if they would have reached out to Mr. Joliet again, Mr. Joliet would have said, "Well if you would have filed a declaration tacking whatever or claiming that land and to whatever," then Mr. Joliet would have said, "It would been notice to everybody." It would have been, to go to in different direction, a UCC notice filing. Everyone would have been on notice in Land Records that Mr. Young was - - was claiming ownership and any confusion regarding 3 or, we're not talking about 2, but Parcel 3.

THE COURT: Didn't…

MR. KLINE: But he did not.

THE COURT: Didn't Plaintiff's Exhibit One do that?

MR. KLINE: I'm saying that - - that the tacking occurred with respect to one parcel.

THE COURT: To Parcel - - Parcel 2.

MR. KLINE: Parcel 2. I agree.

THE COURT: Yeah.

MR. KLINE: I agree. I agree.

THE COURT: Okay.

MR. KLINE: And I'm saying, we're saying the same thing. I'm saying that he knew to do it with respect to Parcel 2.

THE COURT: Right.

MR. KLINE: He knew in '88 that he had prob- that he potentially had problems from two different real estate professionals.

THE COURT: That he might have a problem on Parcel 3.

MR. KLINE: That he might have a problem, correct.

THE COURT: Yeah.

MR. KLINE: And specifically said Parcels 2 and 3.

THE COURT: Mm-hm.

MR. KLINE: He tacks onto 2 by virtue of…

THE COURT: Tacks onto Reeder? He tacks on Wickline's time for Parcel 2?

MR. KLINE: For Parcel 2.
THE COURT: Okay.
MR. KLINE: And I'm saying…
THE COURT: But he didn't tack on for Parcel 3.
MR. KLINE: That's my point.
THE COURT: So what?
MR. KLINE: I'm saying that he was on notice in 1988 that he had a potential problem with respect to Parcel 3.
THE COURT: I…
MR. KLINE: As - - as well as 2. And he - - and he…
THE COURT: Right.
MR. KLINE: …chose - - he chose affirmatively to tack onto 2 but chose not to tack onto 3 or resolve the issue. Therefore, he could have put people on notice. And he let those that were not on notice, the Holder, the Defendants, what have you, they - - they continued to believe the easement was there or the property was available.
THE COURT: I think the Plaintiff has through their testimony and entire presentation agrees that his starting point for his adverse possession claim was 1988.
MR. KLINE: I agree.
THE COURT: Right.
MR. KLINE: I'm - - I'm…
THE COURT: You're saying that the world had no notice that Mr. Young was claiming Parcel 3. And I'm asking,

yeah, but what about Plaintiff's Exhibit Number One, his deed?

MR. KLINE: And my…

THE COURT: If anybody in the world had a question as to who might own Parcel 3, wouldn't they have gone to the top of that cliff and looked around and said, "Well there's the Stonecrest development. I'll track them back. And here's a big farm with a big cliff, I'll track that one with title." And they would have immediately, the first deed they found on Mr. Young's chain, would have been the deed that said he owns Parcel 3.

MR. KLINE: However…

THE COURT: Okay, go ahead.

MR. KLINE: However, if the description of the property is incorrect, which is what Mr. Nagel said, and even Mr. Joliet said that the distances off on Par- Parcel 3 distances were off between Plaintiff's Three and Plaintiff's Eight. Between - - I'm saying that Mr. Joliet testified that there was a difference in distances. And the question that I asked him was, "What did that amount to?" And Mr. Joliet's response was, "Well it's just property. It's all fungible. It really doesn't matter. So what if it's 20 or…," and I'm - - I'm…

THE COURT: I know what you're saying.

MR. KLINE: …paraphrasing.

THE COURT: I understand.

MR. KLINE: "Who cares about the 20, 40 feet?" Because apparently 15 square feet doesn't matter to him either. For argument purposes. I'm just saying - - and then Mr. Nagel has a different opinion because Mr. Nagel's testimony is, is that this is not 12 feet. This in fact 24 feet. So even if you would have gone back, and Mr. Holder's testimony is when he went back and he searched everything before he purchased it, and he found the older deeds, and he asked these people to run the lines and plot the lines. And remember that Mr. Nagel's a surveyor. He's the one that actually goes out and finds the monuments. Mr. Joliet didn't - - he just stayed in his - -, well I don't know what he did. He went out and walked the property one time with Mr. Pembroke, I believe is the testimony. But he did not go out and look for the monuments. He just used what was given to him.

THE COURT: Mm-hm.

MR. KLINE: And my metaphor was garbage in, garbage out, which is if you get this and you just look at only Plaintiff's Eight and Plaintiff's Three, and he says, "Yeah, Fred Fredrick's - - it's - - it's perfect." But Mr. Holder and the - - and the documents you have indicate that these lines, and Mr. Nagel's own testimony, indicate that these lines with respect to Parcel 3 are not correct.

THE COURT: They're off. And there's really a 13-foot width gap is what Mr. Nagel is suggesting.

MR. KLINE: Correct.

THE COURT: Right.

MR. KLINE: And my point is, the Court's question to me, which I appreciate, is well shouldn't people have looked? And certainly, people could have looked. But Mr. Holder's due diligence, I guess if you want to, and I don't know the intention at the time, but if I can purchase this sliver, now remember, and I understand Mr. Pembroke's argument that the - - that the utilities are there and it's whatever, but remember Mrs. Holder's testimony is, "I can't turn around. The road's too small. It's too thin a road. We - - we can't get any construction materials down it."

THE COURT: Okay.

MR. KLINE: I don't…

THE COURT: How are you going to take a construction vehicle - - how are you going to take an 18-wheeler with construction debris, you know, you - - you order from Lowe's or Home Depot, they show up with an 18-wheeler. They got a forklift on the back. The guy gets out of the cab, he gets on the forklift. He pulls all the lumber off. He puts it in your driveway.

MR. KLINE: Mm-hm.

THE COURT: How are you going to take an 18-wheeler down a wagon road on the side of a cliff without telling me you're not increasing the scope of the original grant of the easement in 1872?

MR. KLINE: I'm not asking the Court - - or the Defendants are not asking the Court to enlarge the scope. We're only asking the Court to recognize the easement.

THE COURT: Mm-hm.

MR. KLINE: Put it - - put the easement out there. If the Court were to find that there is a wagon road easement, which we believe is inside of Stonecrest, per Mr. Nagel…

THE COURT: Inside of current Stonecrest?

MR. KLINE: That's what I - - Mr. Nagel, when he testified…

THE COURT: As it's platted on 8292?

MR. KLINE: Mr. Nagel, when he testified, and again, I'm going to point to the tax map, he indicated that based upon the question Mr. Pembroke asked that the wagon road encroached on 9 and 10.

THE COURT: Correct.

MR. KLINE: So this corner right here, 9 and 10, the sides, and as we know, this dotted line going vertical from 14 to 10, there's an extra 15 feet at the top like a dot on an I. But that area right there, we're asking the

Court to find that the wagon road easement is there and deny the adverse possession easement for a reason I'm gonna get to in a second. But the Court's - - I'm trying to address the Court's questions as we go along. That's what I'm asking for. As far as Lowes showing up or Home Depot, they park, quite frankly, they're going to park the trail- the 18-wheeler wherever it is. The forklift's gonna come off the back. They're gonna pick up the goods and come down Antietam. I'm saying…

THE COURT: Why can't they do that on Mount Vernon Road?

MR. KLINE: With all due respect to the Court…

THE COURT: Yeah. Just a question.

MR. KLINE: If - - I under- I understand. I - - I - - I don't not appreciate the - - I'm just saying, we're here to enforce the easement or the property that he pur- that Mr. Holder purchased…

THE COURT: Mm-hm.

MR. KLINE: …from the two entities. And property is special, as we all know. Taught that first day in legal property class. Property is different. This isn't - - this is not a grain elevator with a silo full of grain. It's property. It's specific. It's property. It - - it's different from everything else, and it's treated differently. And we're only asking the Court to enforce

what's in the deeds. The fact that Mr. Holder goes back and does due diligence to determine that there may be a -- a 12-foot, 14-foot, discrepancy width wise…

THE COURT: Mm-hm.

MR. KLINE: He shouldn't be penalized that he in fact bought - - found it and bought it. Just like a salvage hunter may want to do due diligence and buy rights to a vacant piece of land because he thinks the civil war there was a big, I don't know, whatever's underneath, wherever the treasure…

THE COURT: How do you - - how do you deal with Mr. Nagel's opinion and he - - he - - he indicated the - - well two things with Mr. Nagel. And I apologize for jumping in on you. I don't want to ruin your flow.

MR. KLINE: No flow at this point. Go ahead, Your Honor.

THE COURT: How do you deal with Mr. Nagel's opinion regarding the 15 extra square feet? And we can apply it to the gap, the 13-foot gap that may run 400 some feet. What he indicated, because I wrote down his words, the extra 15 square feet should have gone to Stonecrest by deed that granted all the remaining land.

MR. KLINE: Yes, sir.

THE COURT: Okay. Do you agree with his opinion? So Stonecrest…

MR. KLINE: I don't…

THE COURT: Stonecrest should have owned the 15 feet.

MR. KLINE: Maybe.

THE COURT: Okay.

MR. KLINE: I think - - I don't know because I wasn't there, and I didn't represent Stonecrest. Certainly, Ms. Clabaugh, who was here, indicated that if she would have done the work for Stonecrest, she would have been able to recognize this issue.

THE COURT: Right.

MR. KLINE: And - - and I can't address who Stonecrest had. And it - - it's not sure whether or not Stonecrest purchased a portion of a deed, not all of it, and maybe - - maybe this 15 feet…

THE COURT: Well, no, that's not what Mr. Nagel said. Mr. Nagel said his review of that deed that transferred to Stonecrest indicated that it granted all the remaining land.

MR. KLINE: And I'm not…

THE COURT: You see what I'm saying?

MR. KLINE: Yes.

THE COURT: Okay. And there's a reason I'm saying that.

MR. KLINE: Understood.

THE COURT: The reason I'm saying that is I believe

these lands are in the Town of Keedysville. And since 2002, the Town of Keedysville has had a subdivision ordinance. And I believe as a judge of this County, I'm allowed to look at a subdivision ordinance even though it's not been produced in evidence. It is an ordnance of one of our towns. And my reading of that ordinance it is unlawful for an owner of any land that lies within the Town of Keedysville to transfer that land unless it has gone through the subdivision process. How - - if Stonecrest owned Parcel 3 or Mrs. Butts owned Parcel 3 or Stonecrest owned the 15 square feet or Mrs. Butts owned the 15 square feet, how is it lawful for them to transfer that land to Mr. Holder without having it been on Plat 8292 as the remaining lands of what they owned, of what Stonecrest owned? Because you're telling me Mr. Holder is the owner of the gap and the 15 square feet by virtue of a deed from Mrs. Butts and from Stonecrest. He went through that effort, and I applaud the effort. I've told Mr. Holder before, I think the work he has done in this case is amazing. But if a transfer of land under the subdivision ordinance of the Town of Keedysville is illegal if it didn't go through the subdivision process, why wasn't it on 8292?

MR. KLINE: And we don't have any testimony as to why except we have…

THE COURT: Okay.

MR. KLINE: Except that we have the testimony from Mr. - - Mr. Joliet that the distances were not correct, and we have the testimony from Mr. Nagel that the plat is incorrect based upon his calls of the different distances and where have you. The - - the Town testified, Mr. Hull testified that they don't do any work by themselves. They rely upon the engineers and the professionals to come in and they're more - - they may be interested in public utility service and what have you. But even Mr. Hull did not seem to indicate that they retained any professionals to make sure that - - nor was the question asked. And I will concede the question was not, "Did you comply with the local ordinances of, you know, that were in place at the time?" That question was not asked. But Mr. Hull candidly answered that, you know, as part of the Council, and he wasn't specific, so I don't want to place him, you know, on the Council that approved the subdivision, but he seemed to be very knowledgeable that they rely upon the engineers when the subdivision comes forward. And there's a give and take back and forth numerous times.

THE COURT: Okay, you've answered my question.

MR. KLINE: Over a two-year - - over a two-year period.

THE COURT: Okay, thank you.

MR. KLINE: I'm not sure I'm going back to exactly where I was.

THE COURT: It's okay.

MR. KLINE: But one of the points that was made, and this was during the period when I brought up the 1878 rules or whatever, that the Court had said they would take it, you know, and - - and give it the weight it thought was considered, I want to remind the Court that there is a case that goes with that, which is Worthington, sorry, Your Honor.

THE COURT: And this is about what the word, "Grant," means?

MR. KLINE: Yes, what the word, "Grant," means. Which was at 61 539.

THE COURT: 61 Maryland 539?

MR. KLINE: 60 Maryland - - 61…

THE COURT: Yeah.

MR. KLINE: …Maryland 539.

THE COURT: Okay.

MR. KLINE: An 1884 case. And as the Court probably recalls in discussion between the Court and myself was it's in the negative. In other words…

THE COURT: Mm-hm.

MR. KLINE: …the grant grants everything unless you specifically indicate what it does not grant. So it - -

if a person grants with an easement, they don't have to - - I would argue they don't have to specifically indicate back in the 19th century they were granting an easement. The fact that they do not indicate easement, indicates that they're granting whatever they have, easement or otherwise. The Worthington case deals with a renewable lease for ninety-nine years and forever in Baltimore City.

THE COURT: Okay.

MR. KLINE: As well Baltimore City tenants get ninety-nine years renewable forever. I'm sorry, that was my own personal - - the other thing that - - the other thing I want or the other item is regarding and addressing some of the Court's questions whether or not the plats are correct and whether or not the plats can be taken, uh, as gospel if you will, is I raised the issue as it appears on Plaintiff's Twelve and Thirteen. Both contain - - I'm sorry, Mr. Pembroke.

THE COURT: It's Plat 8292 and 8293.

MR. KLINE: Yeah. Both contain the top righthand corner of the vicinity map for the Town of Keedysville. And as I point out, has abandoned railroad.

THE COURT: Mm-hm.

MR. KLINE: My point for point - - or my reason for pointing it out to Mr. Joliet was if the plats are gospel and it says, "Abandoned railroad," and they occurred - -

those plats that I just - - Twelve and Thirteen occurred after the Wickline plat, but yet the Wickline plat doesn't have abandoned - - that it's been abandoned somewhere and we have discussion you can't abandon, whatever. Even Ms. Clabaugh during her testimony indicated abandoned, and she relies - - she indicated in her professional opinion that what is written on the notes on the side are important to take into account. So the fact that she would see, "Abandoned railroad," would have some import to her in determining how to look at the title question in this case as well as any of the other cases she would have. And that would also - - that would also support to a certain extent the grant because in this case, if it's not listed in the negative, then the easement would continue.

Now to address some legal issues, those are the factual issues I thought addressed the adverse possession and certain factors of the adverse possession as to whether it was hostile, open, continuous to meet those elements that I don't think they've met, which is Defendants' main argument that they haven't produced the sufficient, we don't think they've met their burden of proof, preponderance of the evidence, to meet the elements of adverse possession, more specifically, with respect to Parcel 3, based upon Mr. Holder's purchase through the two deeds.

THE COURT: And his purchase through the deeds was when? 2020-ish, right?

MR. KLINE: Yes.

THE COURT: '21.

MR. KLINE: Yes. 2020 or after.

THE COURT: But if Mr. Young already perfected adverse possession in 2008, then who cares about a deed in 2021?

MR. KLINE: If he - - argument is he has not from the Defendants' perspective. First of all…

THE COURT: Why not?

MR. KLINE: Okay.

THE COURT: Just because he didn't - - I understand. He didn't go up there enough.

MR. KLINE: Right.

THE COURT: It's up on the top of cliff. He son said he hunted, but he really didn't.

MR. KLINE: Those…

THE COURT: Why else?

MR. KLINE: And the number of signs.

THE COURT: Those are the factual things on the ground.

MR. KLINE: I agree.

THE COURT: Yeah.

MR. KLINE: Yes. Besides that, the swath, the difference between the 26 that Nagel said and the 12 feet

that appears on the plat, would indicate that adverse possession couldn't be taken over that 14-feet swath for 434, I'm sorry, 462.16 feet because in fact he can't adverse something that's not - - Mr. Young can't adverse possess something that's not his because that extra swath is, I'm gonna say, to the - - to the left of the lines.

THE COURT: Did Mr. Nagel testify to the left of the line?

MR. KLINE: Mr. Nagel testified that it was 26 feet, that indicates 12 feet. But we don't have any indication left or right of the line. The only indication we have is the wagon road is on the interior through 9 and 10.

THE COURT: Okay, go ahead.

MR. KLINE: The other issue why there is - - why we think the adverse possession elements are not met is due to the discrepancy in the amount of acreage. The acreage according to the map is 10.3 and change, 10.36 to be exact. And the title report, which is Justin Holder's Exhibit Seven, indicates 10.47 acres, a tenth of an acre more. I would indicate that that not only shows that there's a discrepancy in the amount of the acreage but also goes to the point that the lines are no correct and that while Mr. Joliet's trying to do the best sitting in his office, the only person that really knows that actually went out and walked the land that appeared before

Your Honor is Mr. Nagel who went and found the monuments. We have a - - we have an extra tenth of an acre from the title company. And then when the plat's done, according to Mr. Joliet, he should only get 10.3, which means that arguably, and I'll back up to the last point, given the Court's concern that we don't know whether it's on the inside or the outside, it may be that the 10.36 is inside this line and the - - the difference between the 10.457 and the 10.36 is his swath on this line.

THE COURT: On what?

MR. KLINE: On this stretch. I'm saying is there's a discrepancy of a…

THE COURT: Wait, hang on a second. If - - if - - if the - - if the easement runs…

MR. KLINE: I'm not…

THE COURT: …to the - - I'm looking at 2499. Okay?

MR. KLINE: Okay.

THE COURT: If the swath that Mr. Holder believes he bought is to the left of that line…

MR. KLINE: Yes.

THE COURT: The - - the darkest line.

MR. KLINE: Yes.

THE COURT: Then that is inside the Stonecrest development from Lot 14 through 10.

MR. KLINE: Yes. I - - I agree with, Your Honor. If

the Court were to find…

THE COURT: How did he buy that property if those owners already owned it?

MR. KLINE: What - - what I'm suggesting, with all due respect to the Court…

THE COURT: It's okay.

MR. KLINE: He went the wrong direction. My - - my point is - - is that we have two plats that are different. Mr. Joliet dismisses it. We have Mr. Nagel, who dismisses both plats and has a third plat. But the only person that's actually walked the property is Mr. Nagel.

THE COURT: Right.

MR. KLINE: The difference in acreage is a tenth of an acre. If the plat is correct, he's entitled to 10.36 acres, which was attached to the deed, which is Plaintiff's One. If the title company is right, which is Justin Holder Seven, then if he only purchased 10.3, then that would explain why Mr. Holder can purchase a 12-foot swath. I haven't done the math. I don't know whether it works out, don't know, don't want to suggest otherwise to the Court. All I'm saying is that Mr. - - Mr. Young, and I don't want to write on the exhibit, Mr. Young's ti- property line while he - - while he may believe that it goes to the darkest line on Plaintiff's Three, it may only go to the lightest line…

THE COURT: Right.

MR. KLINE: …on Plaintiff's Three, which would not encroach on Stonecrest but yet would give Mr. Holder the benefit of this bargain that he purchased from Stonecrest and from Mrs. Butts for this sliver plus the dot that we take…

THE COURT: Possibly unlawfully according to the subdivision ordinance.

MR. KLINE: Yes, but we don't have…

THE COURT: Okay.

MR. KLINE: To the extent you want…

THE COURT: Well I think I'm allowed to look at the ordinance.

MR. KLINE: I - - I'm not suggesting you're not. I'm just…

THE COURT: So when you - - when you're explaining this to me, and we're looking at 2499, are you suggesting to me then that Mr. Young's real Parcel 3 is to the right of the dashed line?

MR. KLINE: I cannot sit here and represent to the Court because we - - we don't have a drawing. And I'm not gonna suggest otherwise. I'm - - and I'm…

THE COURT: How - - how do you deal with then Mr. Nagel's drawing? He did it in court today. He drew it.

MR. KLINE: Yeah.

THE COURT: He made it 25 feet wide or so. And I asked him specifically, I said, "Is all of that Mr. Young's Parcel 3?" And he said, "Not all of it." And you know what I was expecting? I was expecting him to show me the gap that you're talking about. And that's not what he did. He dashed in the whole thing except 15 square feet. And he dashed it in, and I think it's labeled, "Mr. Young's Parcel 3." How do you deal with the drawing that the expert did for me today in court is different from what you're telling me now?

MR. KLINE: As well as I can…

THE COURT: Okay.

MR. KLINE: Which is everyone makes mistakes. We've had clarifications from a number of different people, including experts on the stand, Mr. Holder. I will note Mr. Young's made a mistake. Don't know.

THE COURT: Mm-hm.

MR. KLINE: Doesn't matter. But I do know that Mr. Nagel indicated 24, 25, 26 feet when he drew it.

THE COURT: Mm-hm.

MR. KLINE: And I agree it says what the Court - - it is what it is. And it does certainly show a shaded area, and it does not show a sliver. But at the same time, Plat - - Plaintiff's Exhibit 3, which we're supposed to hold as something important, indicates that width Parcel 3 is 12.2

feet.

THE COURT: Okay.

MR. KLINE: I - - I can't explain it. I wasn't examining Mr. Nagel. I expected the same thing. But it - - it wasn't produced.

THE COURT: Okay.

MR. KLINE: Mr. Pembroke spoke about the difference between a license and an easement and asked the Court to make a determination, whatever it is. I think the appropriate case for the Court to look is a 2003 case, it's *Goss, G-O-S-S, versus C.A.N. Wildlife Trust*. It is 157 Maryland App. 447.

THE COURT: Mm-hm.

MR. KLINE: It's a 2003 case. And the court indicates that the difference between a license on one hand and an easement on the other is the license is merely for personal privilege to do a particular act or series - - series of acts on another's land without possessing any estate or interest therein while an easement is an interest in the land that grants the right to use that land. So in my opinion…

THE COURT: Mm-hm.

MR. KLINE: …the two, while maybe interchangeable, are not interchangeable as far as the courts are concerned. And I - - and what we have alleged is that the wagon road

is an easement and shouldn't be determined to be a license. And as an easement, it does meet the clar- it does meet the - - the requirements that it's been granted, which we've gone over, by virtue of the deeds back in the 19th century that would argue the 1872 deed forward would grant the wagon road easement. The *Purnell* case - - *Purnell* case, which I indicted which was a tad newer than Mr. Pembroke's case, which is the 2012 case dealing with adverse possession of an easement, quite frankly, covers a lot of issues that are present *today* before this Court with respect to this action. For example, non-use is addressed in the case.

THE COURT: Could you give me the cite again?

MR. KLINE: Yes, sir. It is 2- 203 Maryland App. 495.

THE COURT: Yeah, I have it, okay.

MR. KLINE: A 2012 case. And it deals with a number of issues that came up here. And in that case it was a landowner who was landlocked, and he had to quiet title against his neighbors so he can have an easement of necessity over his neighbors' property in Wicomico County. There was a discussion of non-use in the case, which is - - which has come up here. And there's a question of non-use with respect to adverse possession of easements to meet that requirement. And the Court indicates that in other words, and I'm quoting, "A non-use alone is not

sufficient to extinguish a way by necessity," and that's at page 509. So if - - if the wagon road is - - well we believe the wagon road is there and we have testimony that it's there. The fact that Mr. Holder does not use it, does not extinguish his right to the easement that he has obtained. I've already indicated that the owner, in this case, Mr. Young, would have to show that his period of adverse possession has been sufficiently hostile and inconsistent with the use permitted by the easement. The only evidence that we have that he has done that is, and we don't have any use by Mr. Holder except that he cleared out some trees is that he put some sticks, we heard testimony he put up some logs or sticks or whatever. But the - - and while I don't want to discount what the testimony is, the only visual testimony that we have or evidence of what he did that would - - that would comply with that element or meet that test would be Plaintiff's - - Justin Holder's Plaintiff's Exhibit Six, which is the - - which is the picture down the lane. And if the Court were to look at that, we're talking about, I want to say approximately ten sticks. The Court can count them at its leisure, and maybe 2 feet high. It's not inconsistent with the use of as an easement. Well my argument would be, it's not inconsistent and doesn't meet that requirement. The case also cites, excuse me, a

Pennsylvania case, a 1989 Pennsylvania case, and I'm going to spell it, E-S-T-O-J-A-K v. M as in Mary, A-Z-S-A. And that's at 562 A. 2d 271. It's a 1989 case. And cited by *Purnell*, cited favorably, and stands for - - one of the propositions it stands for is the termination of an easement by adverse possession is not favored. Now that's in Pennsylvania. I know it's the Third Circuit, we're in the Fourth. But it's cited by the Maryland courts. It's been cited. The Court can certainly, law clerks are here, they can certainly, you know, Shepardize it, look at it. But it has been cited here in Maryland and other jurisdictions as well favorably. So the adverse possession argument to terminate the easement made by Mr. Pembroke, according to *Purnell*, is not favored. I'm not saying the Court can't decide otherwise. It's just not favored. The Court also in *Purnell*, and this was where it was fenced in, "May fence his land and such use will not be deemed adverse to the existence of an easement until," this is at page 529, "The need of the right of way arises." I would argue that to a certain extent, the need has not arised. There's a need, but by the time the need arised, we're in litigation because, again, he enters land in 2019, 2020, and this case is 2020. A demand is made by the owner that the easement be opened. We have testimony for Ms. Holder that there was a letter sent and demand was

made on Mr. Young to use the easement. We also have the testimony of Mr. Holder that he had the deeds and showed the police when the police came out that he wanted to use the easement. And the owner of the servient tenement refuses to do so.

THE COURT: What was the need?

MR. KLINE: The need to access, we have two needs besides the utilities, we also have the need to use the road so that they can turn around and space on the road.

THE COURT: All right, let's talk about utilities.

MR. HOLDER: Your Honor, can I use the restroom?

THE COURT: I think there's a - - no. I think there's a general proposition in the law that an easement cannot be exceeded from its original grant, the scope of the easement. How do you deal with the idea that you can't turn a wagon road into an underground water and sewer easement? Or let me ask you, can you?

MR. KLINE: If the easement exists…

THE COURT: Mm-hm.

MR. KLINE: If the Court were to find that the easement exists…

THE COURT: Right.

MR. KLINE: And the easement as we've discussed many times is on the - - on Stonecrest property, at least with respect to 9 and 10.

THE COURT: Right. So the servient estate of Stonecrest property detrimentally relied that there was no use of that property when they did the subdivision. No - - no more use of that easement when they did the subdivision. They built a subdivision right on top of it.

MR. KLINE: But we don't know what they think because they haven't been here. If the Court…

THE COURT: Okay.

MR. KLINE: I - - I understand. I mean but…

THE COURT: But doesn't the subdivision plat say it?

MR. KLINE: Subdivision plat speaks for itself. It's a subdivision…

THE COURT: Okay.

MR. KLINE: …plat. I'm just…

THE COURT: Let's go back to - - let's go back to the need and the need for utility. You say there are two needs, one's utility, one is access. Let's talk about utilities.

MR. KLINE: Well that's what's been presented to the Court.

THE COURT: I think there's a general proposition in the law that you can't exceed the scope on an easement from its original grant. Is that a problem for your case?

MR. KLINE: Although told not to concede at all during the Moscow and Litigation Trial Advocacy because that's

the first thing they tell you.

THE COURT: I'm not asking you to concede.

MR. KLINE: No, I…

THE COURT: I'm saying…

MR. KLINE: …I understand.

THE COURT: …does that present a problem for your case if it does? Explain to me why - - how you can get around that problem.

MR. KLINE: Yes. We don't know because we have testimony from Mr. Hull that there's a tap fee at $10,000 and they went through a certain - - and I'm not gonna belabor the point what Mr. Levey was able to do to get the sewer to run underneath the water and get it out there. That was the testimony that I heard to get it out to the Holder property with respect to the utilities.

THE COURT: I heard that the water line is there.

MR. KLINE: Yes.

THE COURT: Okay.

MR. KLINE: The sewer line is not because it wasn't assigned…

THE COURT: I - - my - - my recollection of the testimony is that the sewer line might not be there. I was a little confused by that.

MR. KLINE: No.

THE COURT: But that there was a deal in place that

all they had to do was pay some money and sign an agreement, and the Town and County were going to run water and sewer. And it just didn't happen for whatever reason. If that was in place, number one, why is there a need to go down the wagon road easement to get water and sewer?

MR. KLINE: I'm going to answer your question.

THE COURT: Sure.

MR. KLINE: I just want to clarify something because perhaps my recollection is not as good as the Court's.

THE COURT: Okay.

MR. KLINE: I heard Mr. Hull indicate that the water had been stubbed out to the Holder property for payment of a tap fee.

THE COURT: $10,000 per tap.

MR. KLINE: Yes, sir.

THE COURT: Right.

MR. KLINE: Understood. I understood the testimony to be of Mr. Hull that certain steps had been made that required an agreement to be signed for the sewer to run out under the water because he had to get certain approval to do so.

THE COURT: Okay.

MR. KLINE: But the sewer's not there.

THE COURT: If you're going to put them in the same trench.

MR. KLINE: Exactly.

THE COURT: Right.

MR. KLINE: They were going to do it in the same trench. We don't know, I don't know, I don't believe - - the Court certainly has the testimony that the water is there. I'm not discounting that. But we don't know nor do we have any evidence before the Court as to whether or not if the wagon road is inside Stonecrest and the sewer and water can be tapped in through Stonecrest, whether that would be less, more or the same or even possible, because the Court's indicating they didn't - - they may not have complied with the ordinance.

THE COURT: Oh, no, I'm saying that Ms. Butts and Mr. Castle might not have complied with the ordinance when they attempted to transfer parcels to Mr. Holder without going through the subdivision process.

MR. KLINE: Understood.

THE COURT: Yeah.

MR. KLINE: I'm only suggesting that if it's on the interior - - if the wagon road, if the Court were to find that the wagon road is 9 and 10 in the interior of Stonecrest…

THE COURT: Yeah.

MR. KLINE: And for sake of argument…

THE COURT: Every witness has said it is.

MR. KLINE: Okay, but the Court hasn't ruled so I can't…

THE COURT: Well every expert witness who has opined on the issue…

MR. KLINE: I didn't want to be jumping to conclusions.

THE COURT: …has said it goes through 9 and 10 at least.

MR. KLINE: This line dividing Parcels 9 and 10 in Stonecrest…

THE COURT: Mm-hm.

MR. KLINE: …may provide, not knowing where the taps are, not knowing where the sewer is, we don't know whether the sewer is in the rear of Stonecrest. We don't have any evidence at all.

THE COURT: Well I'm going to take a guess that it's in the road.

MR. KLINE: I'm going to take - - I - - I don't necessarily disagree with Your Honor. I'm just saying I don't know where it's at.

THE COURT: Okay.

MR. KLINE: And there's no evidence to indicate where it's at. It could be in the rear. It could be in the road. And I would agree, in most circumstances and most - - I would concede that it's a really road. But this

distance here for sewer may be substantially less than the agreement that needed to be signed for sewer and - - sewer and water at the Holder properties.

THE COURT: Coming off of Mount Vernon Road.

MR. KLINE: Yes.

THE COURT: Because there's sewer in Mount Vernon.

MR. KLINE: Yes. Don't know.

THE COURT: No, he, Mr. Hull testified…

MR. KLINE: No, no, no.

THE COURT: …there is.

MR. KLINE: I'm saying we don't know the cost.

THE COURT: I understand.

MR. KLINE: So - - so the necessity…

THE COURT: But - - but why is that necessity?

MR. KLINE: Well they have…

THE COURT: How much it costs isn't an issue of necessity. Is it?

MR. KLINE: Well if the cost is - - is exorbitant, then it becomes a necessity. If - - if - - if I have to bury - - if as a result of this, I'm going to change it to electrical lines, if the - - if I have to put in electrical lines, and I have to call the power and - - and they say, "You have to run underground electrical," in some places you do with tall trees in - - in parts of Maryland, versus I could come off of an electrical line up

at 9 and 10 and get to my property. Then it's a lot less expensive for me to run off of over land electrical wires on 9 and 10 to get to the property than it is to run it underground from wherever - - wherever the jump off point is on whatever road in Keedysville. So the necessity is…

THE COURT: And maybe that is all an issue in the case of Justin Holder versus the Morrals and the Selbys and the Ickes.

MR. KLINE: May be. But I'm not…

THE COURT: Why is that - - why is his necessity for water - - he doesn't have a necessity for water. It's already there. Why is the necessity for sewer something that should burden Mr. Young? When sewer is already in the Mount Vernon Street, and they can run - - they - - they had an agreement to run it exactly how they ran the water.

MR. KLINE: If…

THE COURT: Just tell me why it's a necessity?

MR. KLINE: If the Court believes that the wagon road is inside Stonecrest, it is not a burden for Mr. Young.

THE COURT: Okay.

MR. KLINE: If the Court finds…

THE COURT: Okay.

MR. KLINE: …that that - - that wagon road is inside Stonecrest, Mr. Young doesn't care.

THE COURT: But if it then comes out of St- if it then comes out of Stonecrest onto Mr. - - Mr. Young's property, are these Defendants asking me to find that the easement runs to Dogstreet Road so they can put sewer underneath it? That's the point of the case isn't it?

MR. KLINE: Right now…

THE COURT: Yeah.

MR. KLINE: …the only testimony that we have that's been produced is that, with all due respect to Mr. Pembroke and my case, is that there's no argument over Parcel 2. And all the testimony is is that the wagon road ends at 14, Lot 14. That's all we have before the Court.

THE COURT: Okay.

MR. KLINE: So for me to argue I wanted to get to Dog- we don't have any evidence that it's going to Dogstreet.

THE COURT: Okay.

MR. KLINE: We have evidence that Mr. Young has tacked on Parcel 2. And we've already conceded in day one that we're here about Parcel 3. To argue about Dogstreet is not something that I understood this Court to want us to consider.

THE COURT: Well it's wherever the evidence took us.

MR. KLINE: I - - I understand. But the evidence, frankly, to the Court is that the wagon road ends at 14. There's nothing other than that. I think Mr. Pembroke and

I can agree on that.

THE COURT: All right, then the other necessity you were talking about was a necessity of access. Why is there necessity of access to these properties over the wagon road?

MR. KLINE: If he decides, any of the Defendants, decide that they need to use that for turnaround, for any use that would be reasonable, legitimate and lawful for whatever width the Court were to determine the wagon road easement to be, then they, the Defendants, having purchased the ea- well having purchased the property where the easement - - I'm sorry. Defendants should be able to use the easement through their deeds.

THE COURT: Okay.

MR. KLINE: For the - - for the Court to extinguish it would mean that a person that purchased property has an easement on it would lose the use of the easement even though it's been granted and not negatively impact per my argument about granting in the language. But it would also lose it because of non-use. But they couldn't use it till the case was filed. This is not a case of he purchased it in '88 or let's say '90, two years after Mr. Young purchased, he purchased some years later and the testimony from the experts is is that the - - the title search from the experts indicate the deeds give him a

right to the wagon road and his property that's been granted from 1872 forward. He only became aware of it or had a necessity for it commencing when he obtained in 2020 timewise. So he didn't purchase it in '90. So that's another reason for the laches. He couldn't - - he can't have laches when he hasn't even exceeded three years since he's owned it. I'm sorry, when I say he, I'm referring to defense…

THE COURT: Understood.

MR. KLINE: …as a global group, not as one individual.

MR. HOLDER: Can I use the restroom please?

THE COURT: Yes, sir.

MR. KLINE: One of the other issues that - - I'm going to continue, Your Honor, I think it's…

THE COURT: Yeah, yeah, yeah.

MR. KLINE: One of the other issues that came up, and - - and I talked about dealing with the facts was a fence and the maintenance of the fence and, more specifically, the wire fence that appears on a number of different plats and it's been discussed about whether it was maintained or not maintained. And this also deals with the fact of whether - - whether or not Mr. - - it goes to adverse possession of Mr. Young over the two parcels that Mr. Holder purchased regarding Parcel 3. And the question is about the erection of the fence and the existence. So in

Costello versus Staubitz, which is 300 Maryland 60. It's a 1984 case. The Court opines that the existence of a fence erected by the record owner, in this case would be Mr. Young, within the land and for the record owner's own purposes does not support an inference that the fence is a visible boundary delineating the extent of the claimant's adverse possession. In other words, just because it's a fence, it's up to the Court to determine whether or not it can be used for the elements of adverse possession.

THE COURT: Do you mean the fence on the plats?

MR. KLINE: Yes.

THE COURT: You're - - is there testimony that Mr. Young's the one that put that fence up?

MR. KLINE: No. But except for the small…

THE COURT: Didn't that case just say…

MR. KLINE: Except for - - except for the small fence if he were to argue that the stick - - the sticks that were put in…

THE COURT: Oh.

MR. KLINE: …Plaintiff's Six was a fence. He indicted that there was - - I think the testimony was he put those there so that there would not be traffic going back and forth.

THE COURT: Okay, understand. I understand your point.

MR. KLINE: In wrapping up, Your Honor, I appreciate the Court's patience. I think factually given the topography of the land and the use of the land by Mr. Young and given Parcel 3 and its own attributes and given the chain of title by Mr. Holder that - - and Mr. Nagel's testimony indicating a swath, and I recognize the Court's concern that he drew a thing that indicated no swath. But yet between his testimony and what's on the plat, there is a swath. That's my argument. It's 12 feet versus this 24, 25, 26 feet. That the Plaintiff, Mr. Young, through counsel has not met its burden regarding the adverse possession. Certainly hasn't met it with respect to that de minimis amount of the 15 square feet, which sort of came up as a surprise. And the fact that they have not met the elements for adversely possessing an easement as defined by Purnell. I'm happy to answer any other questions. Otherwise, I don't see any - - any of my compatriots - - I'm sorry, if I could have the Court's indulgence. Not having anything else from my colleagues, Your Honor…

THE COURT: Okay.

MR. KLINE: That would be the end of Defendants' argument.

THE COURT: Yes, sir. Thank you very much.

MR. KLINE: Yes, sir.

THE COURT: Thank you for answering my questions.

MR. KLINE: Yes, sir.

THE COURT: Mr. Pembroke, anything else?

MR. PEMBROKE: Just very, very briefly.

THE COURT: Sure.

MR. PEMBROKE: I'd just like to comment or challenge on a number of points raised by my astute colleague. The first is he makes reference to the fact that Mr. Young, he said gave up with respect to maintenance of Parcel 3 and just basically didn't do anything. I don't believe that's consistent with the testimony. He talked about how he maintained it, talked about what he did. And then he said he had other concerns and priorities. He made a conscious decision to let it go back to nature. It wasn't that he just gave up and said, "The heck with it, whatever happens, happens." He also testified that he would go back up there several times a year to assess what was going on with it, what the condition of it was as well as maintaining the signs that had been posted up on the area of Parcel 3. Also, I would point out that posting the property, Your Honor, is only I would argue one indication of having an open, notorious, hostile position of property. There's no legal requirement in order to obtain adverse possession that either the property be enclosed. There was at one time long ago. But in Maryland, it's no

longer a legal requirement that it be enclosed or that it be posted.

With respect to Mr. Kline's comments about Mr. Joliet's August 3rd, 1988, letter referring to the property, I believe that when the Court considers that exhibit, most of the, if not all of the references in it refer to Parcel 2 and a potential issue, not Parcel 3. And in response to that, the testimony was that Mr. Young obtained a quitclaim deed from Ms. Butts with respect to Parcel 2 even though his deed from 1988 included Parcel 2 in terms of ownership. And no one challenged his ownership of Parcel 3 or Parcel 2 until 2020 except for when he attempted to refinance, which is when the overlap on Parcel 2 was first detected. And Mr. Young has claimed since 1988 ownership by virtue of, initially by virtue of his deed.

I - - I - - I would - - I would argue that the accuracy of all of the evidence and the credibility of all the evidence is a factor for the Court to determine and that includes the plats. But it seems to me that in order for Mr. Nagel to be correct in his opinion, Plat 2499 and the Stonecrest plats would have to be in error, both of them. I would argue that based on the expert testimony from Mr. Joliet that that simply is not - - is not correct.

Mr. Kline makes an argument with respect to the discrepancy in the acreage of, I believe, it's one-tenth of an acre over a 10-acre plot. I would argue that that is not a valid argument for the simple reason that an owner of property, they're gonna consider their use or their possession of the property based on their physical presence and the physical topography of the land, not what appears on a - - on a plat or on a deed. So if - - if, for example, if I say, "My backyard goes down the terraces and to the property line or to the - - to the edge of the grass that I mow and stops where the alley, the paved concrete alley starts that runs, you know, runs past my property," I don't care what the acreage is on - - on the plat or on the deed. I consider that's the property that I possess. So I don't believe that the argument that there's a discrepancy in the acreage on paper indicates that there's an issue with respect to what has or hasn't actually occurred on the property and what Mr. Young has done with respect to his use and his possession of the property.

I would also argue that I think one of the primary issues in this case with respect to the evidence is - - is these were the time frame, we're - - we're talking that our adverse possession clock, as you will, if you will, started to run in August of 1988, and it's run all the way

up to now. Most of the evidence that's been presented by the defense is outside the first twenty-year time frame, which would be 2008. The photograph of the area with the logs across the roadway, that's far more recent than 2008 or 2009 or 2010. Mr. Young's claim of adverse possession would have ripened long before that photograph was taken depicting whatever that photograph depicts. And the Stonecrest owners by stipulation have said that they have no knowledge of this property prior to 2016, which is significant because they can't say what was or wasn't going on with respect to that. So essentially, the most consistent, the most credible, and when I say consistent, I also mean consistent in terms of time frame from 1988 up to 2008, '09, '10, comes from Mr. Young and from - - from the Plaintiff's case, not from the defense.

I would also argue that based upon the original grant from 1872, use of the wagon road at this point, you cannot run water and sewer utilities down the wagon road. I would assume that what would be contemplated would be subterranean utilities as opposed to over the top of the ground. But there's nothing in that grant that would even remotely indicate that you can go under the ground even if an easement exists - - existed or exists to this day, you can't go under the ground to put utilities in there. That exceeds the original grant of the property for use of a

wagon road.

I would also, I'm sure not surprisingly, agree with what I believe is the - - with the Court's line of questioning. There hasn't been demonstrated a necessity for either utilities or for access. Utilities are either there waiting or have been discussed and efforts have been made to bring in the sewer. And apparently, it's just a matter of paying fees and costs on behalf of the Defendants in order for that to happen. It's not a matter of necessity. With respect to access, they have access over Antietam Drive, ingress and egress, and that's specifically stated in the Declaration from the Hutzells.

THE COURT: Well Mr. Kline had - - had argued that non-use by itself cannot waive an easement by necessity. And that's why I asked the necessity question.

MR. PEMBROKE: I understand. Anyway, Your Honor, unless you have…

THE COURT: Okay.

MR. PEMBROKE: …questions, that's all I have.

THE COURT: I do have a question. I appreciate that Mr. Nagel drew me a - - a picture. And my recollection of his testimony that - - is that his picture was all of Parcel 3.

MR. PEMBROKE: That would be, excuse me, that would be Mr. Young's Parcel 3.

THE COURT: Yes, Mr. Young's Parcel 3.

MR. PEMBROKE: Yes. Yes, sir. That's my recollection as well.

THE COURT: But if I were to determine that there was a gap, there was this sliver that - - that Mr. Kline was arguing about, 12-feet wide, 13-feet wide, whatever, running along the back of Lots 10 through 14, could your client have adversely possessed that?

MR. PEMBROKE: Your Honor, I would have to say no because I - - our position as I - - as I understand it from my client, is the property line runs up to Stonecrest but not over - - over the line to Stonecrest.

THE COURT: Oh, no, I understand. So…

MR. PEMBROKE: So it would be property - - it would be property that he is not claiming.

THE COURT: Because…

MR. PEMBROKE: That he's never claimed.

THE COURT: Because the gap would be over the Stonecrest property line…

MR. PEMBROKE: Yes, sir.

THE COURT: …is what you're saying.

MR. PEMBROKE: Yes, sir.

THE COURT: Okay. But your position in this case is that he has adversely possessed up to the Stonecrest property line?

MR. PEMBROKE: Yes, sir.

THE COURT: Okay. Thank you very much.

MR. PEMBROKE: Thank you.

THE COURT: All right, everybody, we are a little bit after 5 o'clock. Sit, sit, sit. I realize that this is a very important case to everybody involved. This is not the type of case that I'm just going to walk back to my office and make a decision. That - - that's just impossible in a case that has gone on for three days and has this many exhibits. I have to put in the time and the consideration that the case deserves. Okay? Whether I will issue a written Opinion or an oral Opinion, I have not yet decided. I will make that decision as I get into the deliberation. Okay? I want to thank the attorneys for the quality of your presentations. It was outstanding as always. And, Mr. Holder, I want to tell you that I thought the quality of your presentation was outstanding as well. We had some hiccups, how to get things into evidence. But I've told you before, I thought you - - I thought you've done a really tremendous amount of work in - - in all the cases you have. You did a very fine job these three days. So I want to thank you for the quality of your work. Okay?

MR. HOLDER: It was my pleasure to argue in front of Your Honor.

THE COURT: Yes, sir. Okay, we'll be adjourned. Thank you.

(Whereupon this matter was adjourned at 5:06 p. m.)

OoO

√ Digitally signed by Dee Barnhart

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of **Jeffrey Young versus Justin Holder, et al., Case No. C-21-DV-20-371,** in the Circuit Court for Washington County, on June 23, 2022, before the Honorable Andrew F. Wilkinson.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 163 constitute the official transcript of the proceedings. In witness whereof, I have affixed my signature this 12th day of September, 2022.

Dee Barnhart
Court Reporter